Rec. Thereknapp W. J. Hall pd. 1s 00

CERTAINE OBSERVATIONS

Concerning the Office of the

Lord Chancellor.

Composed by the Right Honorable, and most Learned, *Thomas* Lord *Ellesmere*, late Lord CHANCELLOR of ENGLAND.

Whereunto is annexed a perfect Table, and a Methodicall Analysis of the whole Treatise.

LONDON,
Printed for *Matthew Walbanck*, at *Grayes-Inne Gate*; for *Henry Twyford*, in *Vine Court*, Middle Temple, and *Iohn Place*, at *Furnivalls* Inne Gate 1651.

TO THE READER.

Courteous Reader,

SOme yeares past, the Copy of this Treatise was delivered unto me by John Harding, *late of* Grayes Inne, *Esquire, deceased, and one of the Readers of that Honourable Society, and by him then affirmed to be composed by the Right Honourable, and most learned*, Thomas *Lord* Ellesmere, *Lord Chancellor of* England, *of whose great and eminent abilities I dare not presume to speake, being so unable and unworthy to be a judge of, and the rather I am confident no man will be so hardy as to detract from the memory of so famous a Statesman.*

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A Perfect Table of the most notable matters contained in the first Part of this Treatise.

See in the end of this Treatise an exact Summary or Analysis of the whole booke most methodically composed by the Author thereof.

These

These bookes following are Printed and to be sold for *Mathew Walbanck* at *Grays* Inne Gate, for *Henry Twyford* in *Vine* Court, middle Temple; and *John Place* at *Furnivals* Inne Gate, 1651.

Perfect Conveyancer,
Mirror Iustice,
Abridgment of Lord Cokes *Reports*,
Abridgment of Lord Dyers *Reports*,
Abridgment of Plowdens *Reports*,
Perkins *Law*: *English*.
Actions Slander,
Marches *Reports*.
History of Normans both parts,
Parsons Law,
Privilege of Parliaments,
Young Clerkes Guide,
Collins *Iustice of Peace*,
Pauls *Progresse*,
Attorney Common-pleas,
Attorneys Accademy,
Tearms of the Law,
Fathers Legacy,
Compleat Parson,
Book of Oathes,
Habeas Corpus,
Womans Lawyer,
Liberty Subject,
Wards and Liveries,
Wilkinsons *Sheriff*,
Derhams *Mannel*,

Letter Writer,
Amends for Ladies,
Bancrofts *Epigrams*,
English Grammer,
Lee; Cæsar. *Mr.* Williams *in* Pauls Church yard *sells them*,
Thorps *charge*,
Edgars *charge*,
Books sold by *W. Lee*, *M. Walbanck*, *D. Pakeman*, *G. Bedell*.
Touchstone of common assurances, *by* William Shepheard, *Esquire*,
Fleta, *corrected and enlarged by* Io: Selden, *Esquire*.
Three Readings. *One by Sir* Iames Dyer, *one by Sir* Iohn Bregrave, *one by* Thomas Risden, *Esquire*.

Books sold by *John Place*.

Transactions of the high Court *of* Chancery' *both by practice and president*, *with fees and speciall orders in extraordinary cases*, *by* Wil. Tothill, *Esq*; *and revived by Sir* Robert Holborn, *late Bencher of* Lincolns Inne.
Clarastella, *with pious occasional Elegies*, *Epigrams and Satyres*, *by* Robert Heath, *Esq*;
Vade mecum, *being the substance of all Statutes*, *usefull for a Justice of Peace*, *by* Val. Young, *Esquire*

Certaine

Certaine OBSERVATIONS concerning the Office of the Lord CHANCELLOR.

HAVING ENDEAVOVRED (*for duties sake*) *somewhat to consider the nature of this high Place & Dignity, for two causes, chiefly, I was much discouraged. For neither could I remember any man in this kinde of discourse to have bin imployed; Neither any Iudge or Potentate with whom this Magistrate may be compared, and herein the more I searched, the more I found my selfe confounded.*

IN THE Eighth Chapter of the Second of *Samuel Jehosaphat* the Sonne of *Ahilud*, the Chancellor among the Hebrewes, as the second of *David* his chiefe Officers, is termed *Mazur*; in he *Greeke*, *Ananinnescom*, by *Tremelius* and *Junius* translated (*a Memoria* or *Monitor*) by the *Spaniard Chanciller*, which is all one with

2 Sam. 8. 16.

Cancellarius or *a Comentarijs*; by the *Italian*, *Seritor de le Cose Fatte*, in the *Duch Cantzfer*, in the *French Chroniqueur*, and in our *English* Translation, a *Recorder*, In the fift place is called *Serayah*, and he is called *Sopher*, which in all the aforesaid Translations is tearmed *Scriba* or *Secretarius*, saving that the *Italian* doth name him *Cancellario*. *Sebastian Munster* conceiveth *Mazur* to be a *Comentarius*, and he was ordeined saith he, to be the principall Master to note such things as were worthy of remembrance, or as *Solomon* saith, his Office consisted in this point, to report the actions of old time unto the King, and *Sopher* was appointed to Record them; Herewith agreeth (for the signification of the words) the twentieth of the same Booke of *Samuel*, and the fourth Chapter of the first of the Kings; But whether the Lord Chancellor of *England* as now he is, may be properly termed *Sopher* or *Mazur*, it may receive some needlesse question, howbeit it cannot be doubted but his Office doth participate of both their Functions, being by *William* the Conquerour appointed *Magister Collegij Scribarum*, by the same King instituted in the third yeare of his Raigne, (as writeth *Polydore*) and likewise having had the keeping of the Rolls of Records as *Bracton* witnesseth, either at the same time that the Common place was erected, which was about the ninth yeare of *Henry* the third, or not long after. But something more neer to our name of Chancellor, I finde the Hebrew word *Kinkall*, in Greek *Knilizo*, and in Latine *Cancello*, whereof cometh *Kankill*, in Greek *Knilis*, and in Latine *Cancellus*, and thereof not unproperly *Cancellarius*, as he sitteth *intra Cancellos legis*, (viz.) & *Conscientiæ*, or otherwise a *Cancellando*,

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as shall be afterwards touched. Notwithstanding for that I finde the word *Mazur* better avowed than this latter, and I do not remember much mention to be made of any great Officer among the Grecians neere sounding to *Kniklum*, I will content my selfe with the former name only of the *Hebricians*, without further consideration of his Authority in Jury, notwithstanding with this observation, that long time before this Monarchy of the Hebrewes, a speciall privilege of Jurisdiction in Difficult matters was reserved to *Moyses* wherein he might demeane his decrees according to the Information of his good conscience, for so it may be understood if I be not deceived that in those cases he asked Counsell of God, who gave him Warrant of his Authority, and therefore some have not feared to call him *Cancellarius Dei*: So was *Joseph* said to be *Pharaohs* Chancellor, and therefore his Successors the Chancellors in our dayes, are called *Patres Patriæ*, as he was *Patriarcha*; and as the King only was in seate superiour unto him, so is the Chancellor with us at this day, *Primus post Regem, & secundus in ordine* of any temporall Magistrate.

And surely if in *Greece* I should look for a meet pattern and president to this purpose, I would hope to finde him in the Common-wealth of the *Athenians*, where from the time of the first King *Cecrops* unto the (*Athentes Anno*) I dare be bold to affirme, that little light would be given unto any man much better conversant in the Greekish Histories than my selfe, and from the same time unto the Tyranny of *Pisistratus*, from thence to be renewed *Domestick*, after the Domination of *Antigonus*, I cannot single out any one Justicer of like quality, unlesse I might allow that *Solon* was

 therefore

therefore Chancellor for that he did moderate and temper the positive Laws of *Draco* by his discretion, as well in decreeing as in execution, the which liberty and power was after attributed to the *Nemothetæ*, not those which did make lawes, but those that did allow or reforme the lawes already framed; But mee seemeth the chiefest part of our Chancellors Office may be applyed to the Senate to whom the power was given of making decrees in the causes of private persons and the holding of dayly accidents, but so as that they did not oppugne or contrary the lawes positive. And further we may say of him, that he hath *Jus consultandi* with their Demarches, *Jus judicandi* between Citizen and Citizen, with Action between Citizen and Alien with their *Polymarchus*, whom the Masters of the Rolls, and the Masters of the Chancery are *Paredri* to informe him of the law, as shall more easily be gathered in the processe of this Treaty, and that he hath *jus imperandi* and *Principatio judicior.* with the *Areopagitæ*; and further that he may *multum irrogare* with the aforesaid *Thesmothetæ*, whereof it followeth that he is undoubtedly a most absolute Magistrate, and for that he hath closed in his office a credit for conservation of the peace over all the Realm, with shall not be amisse to call him *Nomophilax* with this remembrance that *Plutarch* writeth, *Eumenes Cardianus* to be *Archigrāmatea Alexandri magni Vulgo Cancellarium ac principem Scribarum qui logotheta in regno & petitiones decretabat quos signabit & in eis se suscribebat.*

In the policy of the *Roman* Empire, I meet not with one example, saving that by report of *Dyonisius* the best and worthiest of the hundreth Senators was chosen by *Romulus*, to whom oversight of

of Justice, the appeasing of Tumults, and the conservatiõ of peace in the City, was appointed at such times as the K. was otherwise busied in the expedition of warfare, not unlike to the Ordinance of *Edw.* the 3. who in the twentieth yeare of his raigne addressing himselfe to his warres upon the French, did then authorize the Chancellor and the Treasurer of *England*, to hear and determine of all complaints against extortion of Officers maintenance, imbracery, and such like offences, by which authority he procured to be confirmed unto them by Act of Parliament, and so it is at this day. The Chancellor of *France*, *Vicarius Regis* and as will appear hereafter; and that there was no other Magistrates in the time of the *Roman* Kings is expressed by the same *Dyonisius* excepting onely *Tribunus Celerum*, which was *Militaris*, and as some hold opinion, certain *Quæsteres* for oversight o the Treasury, sent but otherwise in *Rome omnia Regum Arbitrio administrata sunt*; in imitation whereof, the two great Officers of *France*, which are preferred before all other. *Et semper adsunt ad latus principis*, are the Constable of the Kingdom and the Chancellor, which is called *Quæstor* by some writers. Now in the permanent and ordinary offices of their popular government, what Magistrate might be so mighty or generall in his Jurisdiction, as is the present preheminence of the Chancellor? I speake not of the Consuls of Dictators, which did want nothing at all but the title and the denomination onely of Kings and chief Rulers. *Herbert Budæus* doth not sticke to call him *Præfectum prætorio*, and further (*qui loco Dictatoris sit*) that our Chancellor hath *Jus edicendi*, appeares by his rules and orders for matters of Conscience in the Chancery, which doe especially

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cially concerne his absolute Authority, *Jus judicandi* upon *Audita querelaes*, Petitions *de droit*, &c. where he judgeth according to form of Common Law, *jus cogendi*, by his service of the Mace, and *jus coercendi*, for over all the Realm he hath authority to command a man to Prison: How he might be termed *Censor*, in that he sendeth for the Commissioners for survey of Armour, &c. *Ædiles* in the prizing of Wines and Fish, &c. in the appointing of Sewers, &c. And so to compare him with the severall Officers of that Commonwealth, by reason of his severall qualityes it were both tedious and impertinent, only I have thought convenient to term him *Pretor* for these congruities: First *quoad cognitionem*, then *quoad curationem*. The Cognizance of the *Pretor* was either Domesticall or Popular, Domesticall whereby he might hear the Complaints of every private man within his Palace and in his owne Chamber, *Ministrante atque admittente Cubiculario*, and order them by the Law of his Reason, the which orders were ingrossed by any one of his Clarks and sealed with his owne signet; Popular when he sate in *Basilicâ* or in *Foro*, where he was *Circumdatus Cancellis*, and had attendant upon him, Scribes, Cryers of the Court, and Serjeants, and this was called *Locus statuendi*, in whose constitutions there were two kinds, one of decreeing, another of giving judgement. He was said to decree when without the Counsell or advise of the Judge he would manumiss, emancipate, award possessions of lands and goods, commit wardship of pupills, grant injunctions, and generally when without assistance of a Judge he did hold cognizance of causes and determine thereof as he thought convenient, and in this manner of Cognizance some-

Pretor.

sometimes he would *statuere sine Judice*, sometime he would *Rem iudicibus Statuendum permittere*, as we may fitly translate to dismisse them to the Common law. It was said the Judgment of the *Pretor* either when he proceeded to Judgment according to *leges Regis, duodecim tabulas, Jus Civile, leges, plebiscita*, or *Senatus Consulta*, and herein his authority was not absolute as in the other, or where himselfe did heare and define, remitting the sentence of judgment to be pronounc't by the Judges, in this kinde our Chancellor and their *Pretor* doe differ, especially for that the *Pretor* would at his entry into that Office, publish and propound certain Edicts, which were principles and fountaines out of the which he would derive his decrees. But what names or generall notions the Lord Chancellor doth assigne unto himselfe for limitation of equity and direction of his Conscience that lyeth hidden and concealed in his owne breast, for as saith *Lindwood*, *Conscientia est Cognitione sui ipsuis Cordis & Conscientiæ alicujus quando quid relinquitur ipsemet erit judex &c.* Whereby the man of Law is not able to informe his Clyent what is like to become of his action, or whether it be determinable in the Court of Chancery, or to be tryed at Common Law. But to give some understanding of such matters as are proper to this Court, so farre forth as the absolute power of the Chancellor extendeth, there shal be set here under a competent store of cases whereupon reasonable conjecture may be grounded what is like to fall out in matters of many natures; But of his ordinary power of Judge, and of his Office as he is the Princes Minister, they shall not in this discourse be largely handled in particular, but onely touched (*obiter*) in a word or two.

And thus much of *Rome*, calling to mind by the way that *Tribonianus* to *Justinian*, *Seneca* to *Nero*, *Ulpian* to *Alexander* the Pope, are reported to have bin Chancellor.

The Chancellor of *France*.

And now in the meane time let us in short have regard to the Chancellor of *France*, and to the great Chancery of that Kingdome which cometh nearest to our selves, and would be much resemblance of the form & force of our English Chancery, had not the Court of Requests bin enacted by Commission from K. *H*. the 8. before which time the Masters of Requests had no warrant of ordinary Jurisdiction.

We are to give credit unto the Historyes of *France*, which do: report the first Chancellor of that Kingdome to be ordeined by *Charles* the Great, and that his authority was inlarged by *Charls* the wise the fift of that name. It may be gathered out of these words of *Divus Lucius* which I doe therefore report in Latine as he writ them, for that they be *significant*, *Constitutionum Caroli quinti Supremus omnium ordinum & honorum Cancellarius (quique subinde Regi a Consiliis intimis starent, exhibitis tactisque sanctis Evangelijs in manu Regia in hæc verba jurabunt, quod scilicet et nullum fædus nec ullum conspirationem inirent inter eos & si quid a quoquam contra fieret a statu suo dejectus exauthorazetur.*

Per insignem dignumq; Majestatis regiæ huc referre libuit modum quem Carolus ille quintus cognomine sapiens in eligendo & designando supremo illo Nomophylice Cancellarie non minus cite quam sancte observavit, cum ad centum & trigint. adessent patres conscripti octo juri a libellis Proceres cæterisq; rationales, eos a conclavi Rex abire & exire

exire jussit, postea sigillatim omnes ad unum accersunt, & Jure jurando adegit, ut bona fide quem e Republica hunc Nomophylacie putarent esse perficiendum utrius libet status sacri aut Secularis hominem profiterentur latis suffragiis Petrus Orgs Montius Latinacensis Episcopus Centum quinque puncta & tabulas tulit. Tum ille ut ingenius erat senioribus minimeque ambitiosus tanto huic munere (ne dicam oneri) sese longe imparem excusare. Ac vero Rex tot tantisque calculis approbatum sibi & jam valde probari testatus est signaque Codicillaria ei in manus dando ab eo Iusjurandum Sacrosancto per Evangelia excepit sub ijs conceptis verbis Tuo Juramento firmas Orgementi Regi te obsequentissimum fore. That you shall give unto him faithfull advice and Counsell and such as shall be for his commodity and convenient for his Majesty, as also for the profit of him and the Common-wealth: That you shall never put your self under the obedience of other than of Him, that you shall preserve to the uttermost of your power the revenue of the King and of the Crowne, that you shall never receive nor accept without his consent, any gowne, Cloake, Fee or wages, present or profit whatsoever of any other than of him; that for favour, affection or hatred, you shall do nothing, and if at this present you are bound by Oath to any Lord or Lady, or have bin so heretofore, that you forsake and renounce it wholly.

Hereout may be collected the preheminence, election, and duty of the Chancellor, if we adde hereunto the Words of *Budenes*, That *hodie ejus partes primae sunt videre ut nulla principis constitutio, nulla Sanctio, nullum diploma, nullum Rescriptum, nulli Codicilli Regij non e Republica*

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atque etiam e dignitate Reipublicæ principaliqu exeant cujus censuræ aut stilo principum Majestas actu sua eximi volunt, deniq; qui principis præsentis vicarius peragere agente Interrex quod a morbo esse censetur Jure & proprie Nomophilax legum presidium Juris Asylum id quod E Papiniano quondam dictum est morum institutorum quæ ara æqui bonique Columen appellari potest atque etiam debet id quæ credere me cogit consensus fere hominum institutū quæ quod eam quasi per manus traditum caput eum per verticem Justic. appellantum. And namely it is to be noted, that he might be of either State, Ecclesiasticall or temporall, religious or secular, for the order of all the Chancery Courts in *France* may be seen one Acree in the time of *Charls* the 7th. another of *Charls* the 8th. and that the High Court of Chancery which followeth the King at this day, was ordeined by *Lewes* the 12th. may appeare by the Ordinance of the same King, *Anno* 1498. as also by the acts of *Francis* the First, *Anno* 1540. and of *Charles* the 9th. *Anno* 1560.

There are two Seals belonging to the Chancery, one is the great Seal wherewith are sealed letters of grace, & the other called the Common Seal, lesser than the former, wherewith are sealed the writs of simple Justice, and so have I heard a motion to be made for a like little Seale proper and peculiar for the sealing of Writs originall in our Chancery, all Letters Patents of the King, arrests and ordinances made and agreed in the Privy Counsell, are sealed with the Seale of the King, either by the Chancellor or Keeper of the Seale in the great Chancery, which followeth the Court, For in *France* they have a chief or principall Chancery attendant upon the King

King in the which the Chancellor of *France* doth excercise the office of Sealing, or else his Commissarie assisted with the Kings Secretaries which of right have a certaine Fee out of every Patent by them signed, and also with the Masters of Requests which have the oversight and admitment of all such Writs and Patents as are to be sealed, and moreover in every Parliament of *France* there is by the King of *France* established a Chancery, wherein is placed a Keeper of the Seale, a certaine number of Secretaryes as in the former, which are said *subscripti in sublevamen Cancellarij propter multitudinem negotiorum in Cancellaria & Curia Regis affluentium*; and likewise as are in the Great Chancery, there is one Audiencer, one Comptroler, and one Referendary or Recorder, The Chancellor if he doe exercise his Office, hath for wages by the yeare eighteen thousand French livers and having a Keeper of the Seale substituted he received twelve thousand Livers, and six thousand Livers are assigned unto him, principally for the entertainment of the Masters of Requests, which do ordinarily dyne at the Lord Chancelors Table in their turne of quarters, he hath also besides his wages many other rights and duties, as at the entry of Kings into Cityes, he hath a garment of cloth of Gold, and yearly he hath certain Elles of Velvet, a certain number of lights, and an allowance of Wax, the Chancellor ought not nor may not passe any writing under Seale, contrary to the deliberation and determination of the Privy Councell, neither whereof any doubt is moved by any Master of Requests of the household, but he ought to send the same to the Councell for a resolution.

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Of those which have accesse to the Seal we may place in order next to the Chancellor, the Master of Requests, which are appointed him for surveyors and examiners of such writings as passe the Seale, especially of Patents and Commissions, and all other persons whatsoever are forbidden to enter at Sealing time, saving the Kings Secretaries, the Audiencers, the Comptroller, the Procurator Generall, which is ordained in the said Chancery, and the Chasewax.

By this appeareth the name, and some part of the Office of the Chancellor of *France*, to be given by *Charlemain*, more than one hundred years before the time of *Edward* the Confessor, in whose dayes began the name of our *English* Chancellors according to the assertion of *Florentius Wigornensis*, for that the aforesaid *Edward* having spent a great part of his Age in *Normandy*, was the first that brought the use of the Seale from thence, and with it the name of him that had the charge thereof, and that is the Chancellor, in whom *Leafricies* the Britain is named the first Chancellor, But saving correction I must be of that opinion of the *Normans*, we did not learn our manner of sealing, not onely for that I have seen the Copies of our Kings Patents before those dayes, with *Ego Ina, Ego Aluredus &c. subsignavi*, which indeed may be al one with *subscripsi*, according to 40th. Law in the Digests lib 50. But surely I have either seen the very points of the *Saxony*, *Danish* Seale, or else they were counterfeit to no profitable purpose.

Let other men give what credit they will to the collection of Chancellors by Mr. *Thinne* in the new addition to Mr. *Hollinsheeds* Chronicle lately Published, For my owne part I am neither of experience

experience nor judgment to impugne it, But under the authority of allowable writers, I shall set downe, and that shortly, what I have gathered in so few daies as I have therein bestowed, of the present estate of our Modern Chancellor, and herein some particulars of the Court of Chancery; and first in mine opinion he is the same Chancellor that was *Rembaldus* to holy *Edward*, and *Mauritius* to *William* the Conquerour, whose office was to make and seale the instruments that passed from the Prince, as writeth *Lupanus*, and as for the former mentioned Chancellors before this time, they seem more kindly cheif Secretaries, than to exercize the present Office of Chancellors. For howsoever I am induced probably to conjecture, that before *Edward* the Confessor there was use of Sealing, as I have said; so have I no warrant to allege for a great Seale of the King to passe the Instruments, whereof the charge was committed to the Chancellors, the which, as I take it, may be reputed the originall of his office, and this his originall office was not altered by the aforesaid Conqueror in the erection of the College of Scribes or notaries, neither his name changed as I conceive the words of *Pollydore* where he saith that *Ejus Collegij Magistrum vocavit Cancellarium qui paulatim supremus effectus magistratus of qualis hodie habetur.* But I suppose that authority was also given him by sealing and making certain Writs originalls, the forme whereof was for the most part produced out of *Normandy*, but not the granting of all originalls, because that by *Glanvill* it is affirmed that many of them did beare Teste of himself (viz.) *Ranulpho Ganvilla* who was chief Justice many yeares after; and this by the way is to be remembred, that in the

name

name of Chancellor our ancient Histories may easily deceive us, for some were called (*Cancellarij Regis*) and others (*Cancellarij Regni*) and of those which had this great Seal of the K. in their charge and custody, Some were termed Chancellors and Seale bearers, also that had no partakers of their office, such a one was the same *Rembaldo* to the aforesaid *Edward*, and many others; some were Keepers of the Great Seale, and that solely, *Qui Custodiam sigilli Regii acciperent Cancellarii vices acturi & officium &c.* as saith *Mathew Paris* of *John Maunsell*, although there may be perceived some small difference betweene a Keeper of the great Seale and a Vice Chancellor, for of Vice-Chancellors also I finde two sorts, the one (as I take it) exercising the Office of a Chancellor in matters of Justice, and such a one was *Malus Catulus* in the time of *Richard* the First, another which was chiefe Secretary as it seemed unto the Chancellor, to write the Patent of the Prince, and such a one was *Sywardus*, whose name I have seen subscribed to a Charter of *Edward* the Confessor, *Ego Sywardus Notorius ad vicem Rambaldi Regis Dignitatis Cancellarij subscripsi.*

The first sole Keeper of the Great Seale I take to be *Symon* the *Norman*, who had the Seal delivered unto him in the 23d. year of the Raigne of King *Hen.* 3d. and shortly after also taken from him againe, when he was also banished the Court for that he would not seale the Patent, whereby *Thomas* Earl of *Flanders* might aske 4d. for every sack of Wool that went out of *England* into *Flanders*; But that the Authority of the Lord Keeper was beforetime some way inferiour to the Authority of the Chancellor, that may seem

by the Act of Parliament which was made *Anno 5 Eliz.* that did equall the power of the one with the other; sometimes also the Chancellor of *England* had a Keeper of the seale subscribed to him, and so was *Ranulphus* the Chancellor, and *Richard* the Chaplaine keeper of the Great Seale, both at one instant to *Henry* the first. Sometime there were two Keepers of the Great Seale and both at once, as were *Jefferey le Templer*, and *Iohn de Lexinton*, notwithstanding that *Ralph Nevill* remained Cancellor, of whom *infra*.

Sometime the great Seale was delivered unto 3 at once, as by *Edward* the 2d. to *Will: Melton* and 2 others, joyned with him for a certain time to execute all such things as were to be done therewith during the Kings pleasure.

The election or creation of Chancellors, and Keepers, &c. was of more than one sort, and also of Men of divers degrees and qualities

The Election of the Chancellor.

Sometimes, and for the most part, the Chancellor was elected by the King *Durante bene-placito*, and put in power of his Office, by the Delivery of the Seale, and sometimes the Chancellor was made by Patent to hold that place or office during his life, as *Walter Grey* Bishop of *Chester*, in the time of King *John* and others, some, and the most part were elected by the King onely, some had Patents of the King and were confirmed Chancellors by consent of the three Estates, as were *Ralph Nevill* Bishop of *Chester* in the time of King *Henry* the third, with whom the Prince being offended as reports *Mathew Paris*, and demanding the Seale at his hands, he refused to yield the same unto him, affirming that as he had received it by the common consent of the Nobility,

Nobility, so he would not, without like Warrant resigne the same. And in the dayes of the same King, it was told him by all his Lords spiritual and Temporall, that of ancient time, the election and disposition of the chief Justice, Chancellor and Treasurer, belonged to the Parliament, and although the King in displeasure did take the seal from him, and delivered the same to the custody of others; yet did the aforesaid *Nevill* remain Chancellor notwithstanding, and received the profits thereof, to whom the King would have restored the Seale, but he refused to receive it.

And hereupon may be gathered, that the Keeper of the Seale is not Vice-chancellor in every respect.

And let us note by the way three several Patents were granted unto this *Ralph Nevill* aforesaid, two whereby he is ordained to be Chancellor, and the third for the custody of the Seale, all remaining among the Records in the Tower, in *hæc verba.*

Henricus Rex, &c. Archiepiscopis, Episcopis &c. *Sciatis nos dedisse, concessisse & hac charta nostra confirmasse Venerabili Patri Randolpho Cicestrensi Episcopo Cancellariam nostram habend. & tenend. toto tempore vitæ suæ, cum omnibus pertinent. libertatibus & liberis consuetudinibus ad prædictam Cancellariam nostram, habeat bene & in pace libere & quiete, integre, honorifice cum omnibus exitus libertatibus & omnibus alijs ad eam pertinentibus sicut Cancellar. Regn. Angl. prædecessor. nostror. ea melius quietius liberius & integrius habuere hijs Testibus &c. datum per manum nostram* 12. Febr. *Anno Regni nostri* 11.

His

His ſecond Patent was of this Forme.

Henricus Dei gratia, &c. Archiepiſcopis, Epiſcopis, &c. Sciatis nos conceſſiſſe et hac Charta noſtra confirmaſſe pro nobis, et hæred. noſtris venerab. pri. Randolpho Ciciſtrenſi Epiſcopo Cancellario noſtro Cancellariam Angliæ toto tempore vitæ ſuæ cum omnibus pertin. libertatibus & liberis conſuetudinibus ad prædict: Cancellariam pertinen. quare volumus et firmit. præcipimus pro nobis et hæred. noſtris, quod prædictus Epiſcopus habeat ipſam cancellariam toto tempere vitæ ſuæ cùm omnibus pertinent. libertat. et liberis conſuetudinibus ad prædictam Cancellariam pertin. ſicut prædictum eſt. Teſtibus &c. Datum per manum meum apud Weſtm. quarto die Maij Anno regni noſtri decimo ſeptimo.

This is the tranſcript of his third Patent the ſame day and yeare.

Henricus Dei gratia, &c. Archiepiſcopis, &c. Sciatis nos conceſſiſſe et hac charta noſtra confirmaſſe venerab. patri Randolpho Ciceſtr. Epiſcopo Cancellar. noſtro cuſtodiam Sigilli noſtri toto tempore vitæ ſuæ cum omnibus pertin. libertat. et conſuetudinibus ad prædict. cuſtod. pertinent. Ita quod ſigillum illud Portat et cuſtodiat in propria perſona ſua quamdiu voluerit vel per aliquem virum diſcretum ſufficientem & idoneum aſſignat. ſuum qui quidem aſſignat nob. fidelitat. faciat de fideli ſervitio & de ſigillo noſtro loco ſuo fideliter

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custodiendo, aut quam custodiam prædicti sigilli recipiat. Et si forte idem assignat. suus discesserit, vel vitam suam mutaverit, vel ob causam rationalem per nos vel per ipsum Cancellar. amotus fuerit, vel ipse assignat. sigillum illud ulterius portare noluerit, idem Cancellarius loco illius assignat. alium virum discretum sufficientem & idoneum substituat. Item quod fidelitatem faciat nobis de fideli servitio suo & de prædicto sigillo loco suo fideliter custodiend. antiqua Carstiaca sigilli prædicti recipiat sicut prædictum est, quare volumus & firmiter præcipimus quod prædictus Cancellar. habeat custodiam, &c. hiis Testibus, &c. Datum per manum nostrum apud Westm. quarto die Maii Anno Regni nostri decimo septimo.

Sometimes the Chancellors of *England* were elected by the Nobility, as *Nicholas* of *Eli* was made Chancellor by the Barons; But this seemed a usurpation by them, for they were afterwards the most of them most sharply chastised, and the said *Nicholas* deprived by *Hen.* the 3d. disdaining to have Officers of that estate appointed him by his Subjects.

Sometimes the Chancellors were created out of the Nobility, as *Richard Nevill* Earle of *Salisbury*, in the time of *Hen.* the 6. *Henry Bourchier* Earle of *Essex*, in the time of *Edw.* the 4. the Lord *Wrotesley*, the Lord *Rich*, &c.

Sometimes they were enobled after their advancement to that Office, as *Richard Scroope*, Knight, created Lord of *Boulton*, and *Michael de la Poole* created Earle of *Suffolk*, in the time of *Rich.* the 2. Sometimes they were the Sonnes of Noblemen and Princes children, as *Henry Beauford*, sonne of *John of Gaunt*, &c. in the time

Hen. Beauford.

time of *Hen.* the 4. Sometimes of base and meane parentage, as *Wolsey* Cardinall, &c.

Sometimes Archbishops and Clerkes were ordained Chancellors, whereof the first Archbishop was *Walter Hubert*, Archbishop of *Canterbury*, in the time of King *John*, to whom a Nobleman said in scorne, That he had often seen a Chancellor made a Bishop, but he never before saw an Archbishop made a Chancellor, whereof is to be noted, that many of the former Chancellors were not Bishops when they were elected to that Office, but afterwards promoted to their Bishopricks, upon which promotions, many of them did yeeld and surrender up their Authority of Chancellors, and to this purpose maketh the testimony of *Thomas Walsingham*, who writeth that in the 3 year of *Rich.* the 2. in a Parliament holden at *London*.

Dominus Richardus Scroope cessit officio Cancellariæ, &c. Archiep. Cantuar. Magister Simon Sudbury contra gradum suæ dignitat. ut plurimi conclamabant, illi Officio militaturus accessit, sed si ipse illum procuraverit aut sponte susceperit, novit Deus.

Sometimes were chosen to that place Archbishops and Cardinalls, as *John Thoresby*, Archbishop of *York* and Cardinall, &c. in the time of *Edw.* the 3. &c.

Sometimes Threasaurers of *England* were advanced to the honour of Chancellors, as *Henry de Burgh*, in the time of *Edw.* the 3. Sometimes to the Office of the Keeper of the Great Seale, as *John de Chesshall*, in the time of *Henry* the 3. and many other to either of the places

Sometimes common Lawyers were called to be Chancellors, as *Robert Fleming* Justice, and

 Robert

Robert Thorpe Justice, in the time of *Edward* the 3. Sir *Thomas Moore*, in the time of *Hen.* the 8. and others.

Sometimes were trusted with the Keeping and exercise of the Seale, as *John Maunsell* L. Chiefe Justice, in the time of *Edw.* the 3. &c.

Sometimes the Lord Keeper of the Privie Seal was made Lord Chancellor, as *Edmund Stafford*, in the time of *Henry* the 4. and others.

Sometimes were made Keepers of the Seale men cunning in the Custome of the Chancery, as was *Sylvester de Eversden*, in the time of *Hen.* 3.

Sometime men learned in the Civill and Common Lawes, as *william of Kilkenny*, in the time of the said King.

Sometimes the Master of the Rolls, as *Henry Cliffe*, in the time of *Edw.* 3. who was his Chancellor also, and others.

Sometimes a Keeper of the Wardrobe hath been appointed to keep the Seale, as *John Drakenford* to *Edw.* 1.

Some have been twice Lo. Chancellors, as *John Hotham*, in the time of *Rich.* 2.

Some thrice, as *John Stratford*, in the time of *Edward* 3.

And sometimes there have been three Chancellors in one year, as *Rotheram*, *Alcock*, and *Moreton*, in the 1. yeare of *Hen.* 7. and he that hath been the longest in office, either of Chancellor or Keeper of the Seale, is not remembred to have continued above 18. years.

Some with their Office of Chancellor, have retained other places, as *William Velson* (after Bishop of *Telsard*) was at one time Chaplaine and Chancellour to *William* the Conquerour;

Ranulph

Rannlph Brittaine at one time *Cancellarius Regis specialis* (as saith *Matthew Paris*) and Treasurer of the Chamber: But the mightiest of living by multiplicity of Offices that I may readily finde, were *John Maunsell*, in the time of *Henry* the 3. *Simon Langham*, in the time of *Edw.* 3. *John Stafford*, in the time of *Hen.* 6. *Woolsey* Cardinall, in the time of *Hen.* the 8. And in honour and temporall Dignities, the Lord Marquesse of *Winchester*, who was Keeper of the Seal in the time of *Edw.* the 6. And thus much may suffice for the Originall, Office, Dignity, and Election of the Lord Chancellor: Now may somethiug bee added of the Court of Chancery, and Authority absolute of the Chancellor. ¶.

As the Chancellor is at this day, *Norma omnium jura Reddentium cui omnes Magistrat. honorum suorum fasces submittere non indignentur*: And withall, as *Budeus* calleth them, *Promus & Condus clementiæ benignitatisque principalis*, and generally the mouth, the eare, the eye, and the very heart of the Prince, so is the Court, whereof he hath the most particular administration, the Oracle of equity, the Store-house of the favor, of Justice, of the liberality Royall, and of the right pretoriall, which openeth the way to right, giveth power and Commission to the Judges, hath jurisdiction to correct the rigour of Law, by the judgement and discretion of equity and grace. It is the refuge of the poore and afflicted; It is the Altar and sanctuary for such as against the might of rich men, and the countenance of great men cannot maintaine the goodnesse of their cause, and truth of their Title, the entry and doore whereof ought, *Patere omni postulanti omnibus*

The nature originall of the Chancery.

nibus horis, nulli tamen hiare; which is meant not to gape after such men as bring rewards, or seek accesse to the help thereof by corruption, and it is called *Curia*, saith *Valla*, *a Cura*, for that care and heed is to be taken therein, for the deciding of controversies; but it seemeth rather to be called, *Curia*, an Assembly, or the place of assembly, &c. like as the Kings Court was first called *Curia*, for that the Court of Justice was there first holden.

For the originall of this speciall Court, is to be considered, that in the time of the *Saxons* and of the *Danes*, the King by himselfe did hold a high Court of Justice, wherein he sate in person, and did judge not onely according to meer right and Law, but also after equity and good conscience; and this is confirmed by the Law of the *Saxon* King *Edgar*, (*viz.*) Let no man seek to the King, in matter of variance, unlesse he cannot finde right at home; but if the right be too heavy for him, then let him seek to the King to have it lightned: The like to this Law, is also among the Lawes of *Canutus* the *Dane*; and for the understanding of this right at home, we may remember that in those dayes were certaine Jurisdictions over Leets, Boroughs, and Tythings, &c. and there by authority permitted to the Reeves or Judges of the lower roomes, for the hearing of sutes of small importance, and grant of greater power to the Sheriffes and Aldermen which had the charge of greater Assemblies, all was retained and reserved to the King himselfe, the decision of such matters as by just cause of appellation, either for law or equity, should be brought before him, to be considered and resolved in the aforesaid high Court of the King; out of which

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as were the former, so were all the high Courts of Justice or Conscience at this day derived by the Ecclesiasticall Courts or Temporall.

And here I might take some fit occasion to touch by the way, how in the Parliament, Lawes, not onely for civill, and criminall causes, but also for the matters of the Church, are made, abrogated or mitigated; common wrongs not holpen in other Courts, are there amended and heard, and difficult causes are there ended, Attainders confirmed and annulled, corruption of blood there restored, errors committed in other Courts there corrected, and all constitutions for the State are there confirmed, &c. *Parliam.*

How in the Kings Bench are properly all such causes onely to be handled, which appertaine to the Crowne, or wherein the King is a partie, if they be not by Commission particularly assigned to some other Court. *Kings Bench.*

How in the Court of Common Pleas are holden all Common Pleas between subject and subject of all matters of Common Law. *Common Pleas.*

How in the Exchequer are the Queenes receipts and her yearly revenues recorded and kept, how it is her common Treasury, and a Court for Justice betweene her Majesty and her Subjects, &c. *Exchequer*

How the Court of Wards and Liveries is the Court wherein the Queenes prerogative for Wards is maintained, out of which are sued Liveries, and therein their ages are proved which are in Ward to the King by reason of Tenure, &c. *Court of Wards.*

How the Court of Starre-Chamber is ordained to redresse certaine great offences, provided by Statute, and appointed to this Court. *Star-chamber.*

Duchy Court.

How the Duchie Court of *Lancaster* is also the Queenes Court, and of Record, wherein are holden all Pleas reall and personall, which concerne any the Tenants of the Duchy lands, now in the hands of her Majesty, and parcell of her Crowne, but severed in Court and Jurisdiction.

Court of Requests.

How in the Court of Requests are holden by vertue of their Commission none other but sutes that are made to her Majesty by way of supplication, which is called the poore mans Court, because he should have right there without paying any money.

Admiralls court.

How the Admirall hath disseisin of Marine.

Constable of England.

How the Constable and Marshall of *England* determineth the Contracts touching Deeds of Armes out of the Realme, and handleth matters concerning warres within the Realme, and Combats, Blazon, and Armory, &c. may be tryed by the Lawes of the Land.

Marshalls court.

How the Marshall of the Kings House before the Stat. of *Articuli super chartas* had Authority to heare and determine the pleas of the Crowne within the verge, and now hath the hearing of Trespasses, Contracts and Covenants made within the verge, &c.

President of Wales & the North parts.

How the Court of Presidents and Councels in the Marches of *Wales*, and in the North parts, are Courts of equity in their principall Jurisdiction, although they doe withall exercise other powers by vertue of other severall Commissions that doe accompany the same, &c.

I might further busie my selfe with the County Courts Leets, Courts of Barons, and Courts of Pyepowders, &c. the Assizes, Quarter-Sessions, Commissions of Oyer and Determiner, and Justices

ſtices in Eyre, to ſearch and ſet downe when, by whom, and upon what occaſion all the aforeſaid Courts were erected, wherein they doe containe within their appointed limits, and wherein they doe uſurp Juriſdiction, which was appropriated to ſome others, &c. but for that the matters to be moved therein would require a ſeverall Treatiſe of every ſeverall Court, for the which I feele my ſelfe very inſufficient, I will forbeare at this time to mingle Juriſdictions, and onely continue in the courſe of the Court of Chancery, the which Court I cannot finde in the time of the Conquerour, to be ſevered from the Court of the King, and appointed to be holden by the Chancellor, although I read in that time, and the time of his ſonne *Rufus*, the ordinary courſe of Juſtice was altered in forme, but not in ſubſtance, and whether the *Collegium ſcribarum*, founded by the Conqueror, whereof he appointed the Chancellour to be Preſident, might beare the name and title of a Chancery, in very truth I have much doubted, for I cannot gather thereout any juriſdiction to determine cauſes; and moreover, I read expreſly, that during the Reignes of both the *Williams*, *Hen.* 1. *Stephen*, and *Hen.* the 2. there continued ſtill a Court belonging to the King, which was the place of Soveraigne juſtice, both for matters of Law and Conſcience, called, *Curia Domini Regis*, and *Aula Regia*, for that the Prince himſelfe did many times ſit there in perſon, and had Juſtices *a latere ſuo ſedente*, as ſaith *Bracton*, namely his chief Juſtice, Chancelor, Conſtable, Marſhall and others; and howbeit in the 9. year of *Hen.* 3. by the erection of the Common Pleas, the Common Pleas were withdrawn from the Court which followed the King, to a place

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and Jurisdiction certaine, it seemeth that by the division of Jurisdiction made by *Bracton* in his Book which he compiled by the commandement of K. *Edw.* 1. in the beginning of his reigne, and of the particular authorities delivered out by the King to his Justices, Commissioners, and Delegates, that the Jurisdiction of determining the causes now belonging to this Court, did remaine to the exercise of himselfe, and yet was not the Jurisdiction of the other Courts out of the King, for Jurisdiction, as saith *Bracton*, *Non potest a Rege delegare*, but the causes proper to this Court were managed and determined either by himself in person, or in his absence by his Chancellour, Councellours of State and Iustices of Law, that continually attend upon him for that service; namely the Justices to informe him of the Law, and the Chancellor (which was most usually a spirituall person) to give advice according to equity and good conscience, in which respect also he was visitor for the King, and passed the presentations of Benefices, so that such as sought for reliefe by equity, were sutors to the King himselfe, who being assisted with the Chancellor and his Councell, did mitigate the severity of the Law in his owne person, when it pleased him to be present, and did in absence either referre it to the Chancellor alone, or to him or some other of the Councell; yet have I some good causes of conjecture, that the Chancellor in those dayes was a Judge ordinary in the same Court, to hold plea by Latin Bil, *In monstrance de Droit*, Pleas and Enterpleas of Livery and *Ousterle Maynes*, of portions and such like, as a Minister to make processe, &c. And therefore I cannot agree with the opinion of some men, that this

Visitor

a Minister

Court

Court of Chancery was erected, and first assigned to the Lord Chancellor, in the 36. year of *Edw.* 3. as well for the Patentees afore set downe doe grant and confirme unto the said *Nevill officium Cancellariæ* of the Chancery, and not *Cancellarii*, which was in *Hen.* 3. time, as also for that in divers Statutes long before this time, and in Yeare Books, there is mention made of the ordinary authority of the Chancellor, the Register, and the Clerks of the Chancery, (*viz.*) in the Statute of *Glouc.* in *Anno* 6. *Quo warranto, &c.* of *Acton Burnell* in *Anno* 11. Processe upon Recognizance, in *Westm.* 2. *cap.* 24. *concordand. Cleric. de novo brevi, &c. Ad cap.* 49. *Champertie, &c.* and *Statut. Marchante, Brev. dl. Viscount, &c. in Anno* 13. *Stat. de consultat. procedendo, &c. in Anno* 24. *Articuli super chartas, cap.* 5. follow the King, &c. 6. Seale, &c. *in Anno* 28. of *Ed.* 1. and in *Ed.* 3. his time, *Anno* 1. *Stat.* 2. *cap.* 15. writing by Dures, &c. *Anno* 14. *cap.* 8. chuse Escheators, &c. *Anno* 5. *Stat. Carbal. adymytt. Attorneyes, &c. Anno* 19. *Sacrum Clericorum Cancellar. &c. Anno* 20. *cap.* 3. Oath of Justices Chancery, &c. *ad cap.* 6. Chancellor and Treasurer, &c. *Anno* 25. *cap.* 2. *Sley* Chancellor, Treason, &c. and *ibid. cap.* 4. writ to Mayors, &c. *Anno* 31. *ca.* 3. Fifty wives, &c. in the 29. of the Booke of Assizes wee may see partition before this time made in the Chancery and execution thereof by *Scire fac.* out of the com. pleas in the 20. *Ed.* 3. Sute in the Chancery by Petition to repeale a patent, &c. So may wee remember 15. 18. and 2. *Edw.* 3. for Petitions, &c. before this time, and divers other cases.

In 20. of *Edw.* 3. an absolute power was by Statute

Statute given to the Chancellor joyntly with the Treasurer, to punish divers offences therein mentioned, according as Law and Reason required, &c. but whether this may be said to give them authority of extraordinary and absolute proceeding against thé, I stand in some doubt; howbeit, I do not think, that the jurisdiction of the Chancery was thereby inlarged, but it seemeth very probable, that the Statute of 36. of the same King, though it were not the foundation and erection of the Chancery, did notwithstanding adde a great measure of jurisdiction unto the same, for there it was agreed by Parliament, that if any man were grieved contrary to the Articles in that Statute mentioned, which were many and generall; or others contained in divers Statutes, he might come into the Chancery, or any for him, and thereof make his complaint, where he should be relieved by force of the said Articles and Statutes without elsewhere pursuing to have remedy: By which Law, the Chancellour was not onely made sole Judge in this Court, but was inabled also to proceed in judgement there after his owne discretion, for otherwise the words without other Sute, were not beneficiall; but saving correction, I take the Statute of 17 *Edw.* 2. to be the especiall ground-work of the Chancellor his absolute power, where authority is given him upon untrue suggestions, to ordaine and award damages according to his discretion, by expresse word, &c. after which time his power, from time to time, *Vires accrevit eundo*, be enlarged by sundry Parliaments, as by one, to send forth Proclamations of Rebellions, &c. against such as would not appeare, and by others, both to grant Commissions of divers kinds, and to do

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many other things, whereof mention shall bee made in the cases set downe hereafter concerning his power absolute, the which is intended the speciall, but an object of this Treatise; Now therefore in the meane time may we confidently call the Chancery the Kings High Court of Conscience, made especially to redresse private causes, such as by extremity of Law, cannot have agreeable end to equity, by reason of circumstances hindering; wherein it is to be noted, that conscience is so regarded in this Court, that the Lawes are not neglected, but they must both meet and joyne in a third, that is in a moderation of extremity. It holdeth plea also of common or civill matters between the Prince and his Subjects, so farre forth as the same hath to do with Petitions, Traverses, *Monstrance de Droit*, and such like; out of this Court, as from the person of the Prince came all manner of originall Writs, whereof some are Commissional or Commissary, giving Authority to certaine Judges or Officers to heare and determine causes, some are certificatory, or Remotaries of Records, Pleas or other Acts, some doe command to proceed as Writs *De Procedendo*, &c. some inhibit or excuse, as Prohibitions, Protections, or *Graunties de jours*, and of *Essoynes*, &c. Some are deductory, to summon and bring the party impleated into the Court, to answer to the Plaintiffe.

Out of this Court come most commonly Commissions, Patents, Licenses, Inquisitions, &c. of this Court is said, *Articuli super narrationes novas*, that it is *Curia ordinaria, pro brevibus originalibus emendis & concedendis, sed non pro placitis communibus habuendis*; meant, as it seemeth, according to the course of the common

Law,

Law, and in the Treatise of Diversities of Courts, It is noted, that the Court of Chancery is a Court of high nature, out of the which doth proceed Writs Originall, as is aforesaid, and there a man may traverse Offices, and in the same Court the Kings Widdowes shall be sworne that they will not marry without the Kings leave before they be endowed; and it is there said, that the errour upon a Patent or Traverse there, cannot be reversed any where else then in Parliament, &c. And in this Court a man shall have remedy for such things, for therewith he shall not have remedy at the common Law, &c. *ibid.* In this Court of Chancery a man shall not bee prejudiced for his mispleading, or for default of forme, but according to the truth of the matter, for that awards there are to be made according unto conscience, and not *Ex rigore Juris*; And further in *Fleta* are these words, *Fiant autem brevia inde audicialia in Cancellaria ea recognitionibus & contractis habitis & inde Rotulis Cancellariæ irrotulatis, Et ex Recordo Consellario & clericis sibi assasiatus per hanc constitut. concessæ quia de his quæ Recordata sunt coram Cancellario Dom. Regis & ejus Justitiar. qui recordum habent & in rotulis eorum irrotulantur, non debent fieri processus placiti per summonationem vel Attachiamenta Essonia visus terræ & alios Solempnitatis Curiæ sicut fieri consuevit in contractibus & commencionibus factis extra Curiam, &c.* This Court is also by some called *Offic. Juris Civilis Anglorum*, because out of this Court issue all manner of Proces, which give the party his cause of action in other Courts.

Proces Cancellariæ. The Proces in the Chancery is a *Subpœna*, which is to call the party before the Chancellour, upon

upon paine of one hundred pounds, &c. and this is the way used to bring in the partie, or else by the Serjeant, as shall be said afterwards, and how the paine is but *in terrorem*, for thereof shall be no forfeiture; but if the party come not in, or comming in will not obey the order of the Court, hee shall be imprisoned, during the pleasure of the Lord Chancellour, as will appeare in the severall handling of his absolute power, where also will be remembred the Stat. of 15. *H.6.* that no *Subpœna* may be granted without Suerty to satisfie the Defend. for his damages and expences, if the matter cannot be made good, which is contained in the Bill, &c.

The order of proceeding in the Chancery is by Injunctions, Decrees, and Orders, the which how farre they binde the party, and how hee is punished by imprisonment, for resisting them, shall be also shewed in the cases of the power absolute hereafter placed.

The Judge in this Court, is the Lord Chancellour onely, and he is Keeper also of the Great Seale, the which is usually carryed with him wheresoever he goeth, so he goe not beyond the Seas, for then he is to leave it behinde him to such for whose fidelity he will answer; As did *John Stratford* Chancellour and Embassadour in the time of *Edw.* 3. And so did *Stephen Gardiner*, in the time of Queen *Mary*, when he went to *Calice*, leave the Seale with the Marquesse of *Winton*, the which lesson he might learne by the chastisement of Cardinall *Woolsey*, who carried the same beyond the Seas to *Calice*, where he left it with Doctor *Taylor*, Mr. of the Rolls, to keep untill his returne out of the French Dominions. *The Judge.*

Yet

Yet may there be other occasions also, for the which the Chancellour may commit the same to other mens custody, as did *Robert Thorpe* Chancellor, in the time of *Edw.* 3. at his going hom to his owne house hee left the great Seale with foure of the Guardians, or Masters of the Chancery, to keep and use as need required.

Further for the keeping of the Seale wee may remember, that as the King himselfe doth deliver the same unto the Chancellor, so may he not surrender it to any other but to the same King or to his Successor.

To this purpose saith *Thomas Walsingham*, that Sir *Richard Scroope* having very solemne Messengers sent unto him from *Rich.* 2. and that in the Kings displeasure, to demand the Great Seale to be committed unto them: His Answer was, The Seale I am ready to resigne, not unto you, but unto him which gave me the same in custody: *Nec erit medius portitor inter me & illum, sed ego restituam illud manibus suis qui mihi propriis non alicujus manibus commisit illud. Et ita pergens ad Regem sigillum quidem retradidit, & se fidelem Regi sicut hactenus repromisit officiaturum tamen se futurum sub illo in posterum denegavit, &c.*

Yet seemeth it not so necessary, that the Chancellor deliver it with his owne hands: For it is written that *R. Baldolke*, Chancellor, upon the death of *Edw.* 1. did send the great Seale to *Ed.* 2. And *Thomas Rotheram* was shrewdly blamed for that he rendred the Seale to the Queen Widdow, to whom it did not appertaine after the death of *Edw.* 1. and in the circumstance of the delivery thereof we may also note this difference, that the Chancellour hath heretofore received an

Oath

Oath with the receipt of the same, although the Keeper of the Seale doth receive it without oath, for so it is Recorded, that *Rich. 2. Manibus suis propriis* received the Seale, *Et incontinenter prædictus Dom. nost. dictum magnum Sigillum suum in Bago sic inclusum venerab. in Christ. patri. Edoard. Episc. Exon. cujus sacrum de officio Cancellarii bene & fideliter faciend. & excereend. ib. recepit in præsentia, &c. liberavit.*

The forme or fashion of this Seale is usually altered upon every succession, the print whereof is directed by the pleasure of the Prince, the validity thereof I dare not to dispute, for that on the one side it is said by the Justices in the reports of the 18. and 19. of this Queene, that a Patent under the Great Seale is good, though the Chancellour have not warranty to make it.

And on the other side, the History is not forgotten, of the Duke of *Northumberland*, who alleged, as is reported, the Great Seale for his Warrant, &c. which was not accepted, and moreover is recorded in the time of *Hen.* the *6.* a confirmation of such Deeds, &c. as had past the Great Seale, (*viz.*) *Henry* by the Grace of God, &c. To our Chancellor of *England*, greeting. All such Grants as that sith the tenth yeare of our Reigne, untill this time, you by force and vertue of Bills with our owne hand, and by Letters under our Signet of the Eagle and Armes, and also by Bills endorsed by our Chamberlains hand, and Clerks of our Councell, have made our Letters Patents under our Great Seale, wee hold them firme and stable, and of as great strength, &c. as though you had for them our Letters of Privie Seale, &c. long before which

time there was a Statute made in the 2. yeare of *Edw.* 3. (*viz.*) it shall not be commanded by the Great or Little Seale, to delay or disturbe common right, and though such commandment doe come, the Justices therefore shall not cease to doe right in any point; and by the Statute of Articles, *super Charta*, *cap.* 6. It is forbidden that from thenceforth should passe under the little Seale, any Writ that concerneth common Law; And long after this time also (*viz.*) 2. & 3. *Phil.* and *Mary*, *cap.* 20. It is ordained, That the King under the Great Seale of *England* may unite Lands to the Duchy of *Lancaster*; but for the manner of renewing the Seale, the defacing and bestowing of the old, with the Proclamation and notification of the new, we may observe the ancient manner out of these words remaining in the Tower of the time of *Edward* the First, (*viz.*)

Rex Vic. Ebor. salutem. Quia pro regimine Regni nostri quoddam magnum Sigillum de novo fecimus fabricari differen. tam in circumferentia quam in diversis sculpturis ex utraque parte sigilli sigillo a quo hucusque utebamur, & volumus quod eidem novo sigillo a quarto die præsent. mensis Octob. fides prebeatur & dictum antiquum sigillũ rumpatur deinde post prædictum quartum diem aliqua brevia seu litera nullatenus consignentur & impressionem dicti sigilli novi in cera alba tibi duximus transmittendam tibi præcipimus quod in pleno Comitatu tuo mercatis feriis & locis aliis in balliva tua ubi expedere videris dictam impressionem ostendi & pace fieri facias omnibus & singulis ex parte nostra injungend. quod brev. brevis literis & chartis dicto novo sigilo consignatis fidem præbeant & aliqua brevia

seu

seu literas post prædictum quartum diem antiquo sigillo signat. non recipiant nec eis utantur quoquomodo, volumus tamen quod brevia literæ & chart. prædicto antiquo sigillo ante prædictum quartum diem consignat. in suo robore perseverent & eis fides præbeat. prout decet Teste Rege apud Nottingham tertio die Octobris, &c.

Eodem modo mandatum est singulis Vicecom. per Angliam, and further.

Memorandum quod die Dominica, (viz.) quarto die Octob. Anno Regni Ed. primo; Eliens. Episcop. Cancellar. ipsius Regis in Camera sua in Priorat. de Lenta juxta Nottingham in præsen. clericor. de cancellar. & aliorum tunc ibidem existen. protulit in quodam panno lineo sigillo suo consignat: quoddam magnum sigillum ipsius Regis de novo fabricatū & asserunt quod voluntas ipsius Regis fuit quod extunc. omnia brev. lit, et cartæ ipso novo sigillo consignaren. & quod antiq. Sigil. rumperat. et die Lunæ prox. sequen. in præsentia ipsius Regis in Cam. sua in Castro de Not. dict. antiq. Sigil. præcipiente ipso Rege ruptum fuit in multas pecias & idem Cancellarius pecias illas dedit Richar. Spigurnello ipsius Cancellar. & dictum novum Sigillum ad dictum hospitium suum secum detulit & inde brevia chartas & literas consignavit, &c. And to the same purpose of bestowing the Old Seale, appeareth in *Richard* the 2. a Writ directed to the Treasurer, &c. of the Exchequer in this form.

Rex Thesaurar, et camerar. Quia ex relata fide dignor. accepimus quod quotiescunque magnum Sigillum quod pro regimine Regni nostri Angl. ordinat. existit per mortem Regis aut alio modo mutari contigerit sigillum illud Spigurnello Cancellar. nostræ pro tempore existen. tanquam feodum

dum suum de jure pertinere debet, nos volentes dilecto nobis Willielm. Wightman Spigurnello Cancellar. nostra pro feod. suo magni Sigilli dom. Ed. nuper Regis Angl. Avi nostri quod post mortem dict. Avi nostri cum gubernaculum Regni prædict. suscepimus mutatum existit satisfieri jubere vobis mandamus qud eidem williel. centum solid. pro feodo suo sigilli prædict. de thesauro nostro solvatis excusa præd. Teste Rege apud Westm. 6. die Junij, &c.

The Assistants. The Assistants of the Lord Chancellour are the Masters of the Rolls, and the Masters of the Chancery.

The Master of the Rolls. The Chancellor and the Master of the Rolls, have been heretofore spirituall persons, it appeareth by the election of Bishops, &c. before rehearsed, to the place of Chancellor, and by a Patent of *Ed.* the 3. the Master of the Rolls was appointed and installed in the house of the Rolls in *Chancery-lane* by the Lord Chancellor, the which manner of induction and installment continued as long as the Masters of the Rolls were of the Clergy, which may be proved by the Presidents of those Inrollments, and the Writs themselves extant of Record.

The Mr. of the Rolls at this day is the Keeper of all Records, Judgements and Sentences given in the Chancery.

Besides that, in the absence of the Chancellor he doth both heare and decree, &c. as well in the Court, as in the Chappell of the Rolls, howbeit the Decrees made by him are entred either *Per curiam*, or *Per Cancellar.* and further, he hath much preheminence, and divers prerogatives by Statutes, Commission, and prescription.

The Masters of the Chancery are, for the most part

part, Doctors of the Civill Law, and doe assist the Court, to shew what is the equity of the Civill Law, and what is conscience; but surely they have bin heretofore such as have beene expert in the course of the Chancery, and skilfull in the Lawes of the Realme; as appeareth by the 2d. of *Rich*: 3d. where they doe shew unto the Justice, the course of Writs of Error, and may be gathered out of the Book, Intituled *Fleta*, whose words are these.

Est inter cætera quoddam Officium quod dicitur Cancellaria quod in viro provido & discreto utpote Episcopo vel Clerico magnæ dignitatis debet comitti simul cum cura magni sigilli regni cujus substituti sunt omnes Cancellarij in Anglia, Hibernia, Wallia, *&* Scotia, *omnes quæ sigilla Regis custodientes ubique præter custodem sigilli privati, cui associentur Clerici honesti & circumspecti Domino Regi Jurat. qui in legibus & consuetudinibus Anglicanis notitiam habent pleniorem quorum officium sit supplicationes & querelas conquerentium audire & eis super qualitatibus injuriarum ostensurum debitum remedium exhiberi per brevia Regis, &c.* And further of the Masters of the Chancery *ibidem.*

Episcopi autem collaterales & socij Cancellarij esse dicuntur Præceptores eo quod brevia causis examinatis remedialia fieri præcipiant & hoc quandoque tam sive denarijs ad opus Regis tam sive Fine, &c.

The Officers of the Chancery:

The Officers in this Court are the Pregnatory of whose Office in *Fleta* is written thus.

Habet & Rex Clericos suos Prothonataries in Officio illo, qui cum Clericis, &c. Familiares Regis esse consueverunt & præcipue ad victum & vestitum qui ad brevia scribend. secund. diversi-

tates querelarum sunt intitulati & qui omnes pro victu & vestitu de proficuo sigilli in cujuscunque usus pervenerit debent honeste inveniri. But at this day there is but one Pregnatory, neither doth he exercise his Office in the form abovesaid.

The Clerk of the Crown is the chief Guardian of the matters of the Crown.

The six Clarks of the Chancery, which are the Attornies, as well for the Plaintiffe as Defendant, in every Sute in this Court, and they were heretofore Spirituall men, as may appear by the Statute 14. *Hen.* 8. which doth License them to Marry, with Proviso; That the Master of the Rolls may notwithstanding grant those Offices as before time, the forfeiture by reason of Marriage only excepted.

The Register, who is the penner and keeper of the Decrees, Publications, Orders and Injunctions issuing out of this Court.

The Comptroller of the Seale, who is to see and allow of all the Writs made in the Court, of whom I take it is spoken in *Fleta*, where it is said; *Eleget & Rex Clericos in Officio illo expertes & legales qui formas brevium cognoscunt qui approband. admittant, defectiva omnino repellan. quibus omnia brevia priusquam ad sigillum perveniunt cum deliberatione distincte et aperte in ration. dictione litera & silliba examinare injunctum est, & sciend. quod nullum breve nisi per manus eorand. debet ad Sigillum admitti.*

Two Examiners also, who do take the Examination of the Witnesses, brought to prove or disprove any thing in Sute in this Court, and to put their Depositions and Answers made to their Interrogatories in writing.

The Clerk of the Hamper, which doth receive the

the Fines, due for every Writ sealed in this Court, &c.

The three Clerks of the Pettibagge, which doe Record the Offices that are found in the Court of Wards, and have the making of divers Writs proper to their Office, &c.

The 24. Cursitors have sundry divisions of charges, for the writing of all Writs Originals, &c. in all the Shires of *England*, &c. *Quibus de gratia Cancellaria concessum est pro expeditione populi, brevia facere Curseria*, as is in *Fleta*; the which Cursitors at this day, by Ordinance set downe by the deceased Sir *Nicholas Bacon* Lord Keeper, and confirmed by her Majesties Letters Patents, are authorized and appointed to make all manner of Writs of Debt, Trespasse, Accompt, Assizes, Attaints, Replevies, Conspiracies, *Cui in vita Dower*, and Formedons, Ejectments of Leases and custodies, Errors, false Judgments, Petitions *quare impedit*, Recordaries and Writs of Right, *valore Maritagij*, Waste, Excommunicat. *Capiend.* and all Writs of Covenant, and of every and all manner of *Dedimus potestat.* to be made upon any such Writs, and originall processe, and all other originall Writs, or of the nature of originall VVrits, that are to be made within the Shires and Places to them allotted; And that no other person shall make these Writs but they, by which Ordinance also the nomination and allowance of these Cursitors, doth appertain to the Chancellor or Keeper of the Great Seale for the time being, as in the said Ordinances is declared, together with all other Orders, &c. concerning the said company, whereof is to be observed, that although by the late Lord Keeper the writing

 of

of the aforesaid VVrits was particularly assigned to such particular Officers, yet were there Cursitors before that time, of the same name, and of the same exercise. The Serjeant of the Mace, who carrieth the Mace before the Lord Chancellor, and is to call any man before him, at his commandement. There is also mentioned in Record of *Edw.* 3. *Officium de portandi rotulis ubi Curia se divertabat priusquam in loco certo tenebatur vocat Porij. concessum Adamo Marlyn*, &c. The which is the same Office of Keeper of the Rolls at this day. And this place in the 13th year of *Edw.* 3. was granted by the Chancellor and Master of the Rolls, the which Grant remaineth upon Record. Other Officers there are for particular Functions in the Chancery, granted by Patent from the Prince, as of making the VVrit of *Diem clausit extremum*, making of Subpœna's, writing the Liecnse of Alienation, of Protections, and a great number of others of the like nature; so are there also the Sealer, the Chafe-wax, &c. Some are constituted by Parliament to be Ordained by the Kings Letters patents, as the writer and inroller of confirmations of all such Licenses, Dispensations, &c. as shall be brought into the Chancery, under the Archbishop of *Canterbury* his Seal, &c. For the Oath to be taken by the Clerks of the Chancery may be seen the Statute of 18. *Ed.* 3. which is to be taken not by the six Clerks only, but by all other Officers in the Chancery, of the like quality, and their servants also. Moreover for the privilege of the Officers in the Chancery there is a record of *Rich.* the 2.

Quod Clerici ibidem nec eorum servientes non coganiur respondere coram aliquibus Justiciarijs

rijs & Judicibus ſecularibus præterquam coram Cancellario Regis ſeu cuſtode magni ſigilli Regis ſuper aliquibus placitis ſeu demandis quæ Dom. Regem non tanguut (except *placitis de libero tent. felon. & Apellis Brev. Regis. Anno ſecundo, R. 2. parte ſecunda, Article* 18.

The forme of their privilege is ſet down in the Regiſter of Writs; and in the new *Natura brevium.*

The Maſters of the Chancery have privilege to be exempted from being Procurators of the Clergy.

But leave we the Officers, to ſpeak ſomething more largely of the power of the aforeſaid Judg, which is the Chancellor, &c. wherin will fall out ſome further matter concerning the Chancery.

The abſolute power of the Lord Chancellor.

THe power of the Lord Chancellor is divided into two parts, the one Judiciall, and the other Miniſteriall; the Judiciall is likewiſe of two diſtinct ſorts, (*viz.*) either abſolute, or elſe ordinary; whereof intending to proceed to their particular diſcourſe, I have choſen the abſolute power to be the firſt, as well for that it proceedeth in Dignity, being abſolute without comptrollment, other than in Parliament; as alſo it ſpreadeth it ſelf moſt largely, being moſt infinite, without any preſcribed limitation, intending to leave the reſt to be hereafter ſeverally handled with better opportunity.

In this preſent Treatiſe I have plainely and faithfully

faithfully set down the Cases, Opinions, and Decrees, in such sort as they may, by the Reports of the Year-Books, and by the ancientest sort of Records in the Chancery, be best warranted; and have thought fitter to set down the makers of the Statutes, and the pronouncers of the Law to be heard as it were speaking in their own phrases and proper terms, than that I should presumptuously wrest the same into any other curious method, only I had regard unto two things, the manner of proceeding, and the matter of the subject, unto the first I referred these Titles following, (viz.)

Chap. 8. *What costs and damages shall be awarded in the Chancery.*

And under the second I have contrived these Titles.

CHAP. 1. *Of Lands.*

Chap. 2. *Of Lands in use, or in trust.*

Chap. 3. *Of Coppy-holds.*

Chap. 4. *Of Chatells reall.*

Chap. 5. *Of Chatells personall.*

Chap. 6. *Of Chatells in trust.*

Chap. 7. *Of Aliens, and Strangers.*

Chap. 8. *Certaine speciall powers absolute, given to the Lord Chancellor by severall Statutes.*

Chap. 9. *Certaine speciall powers absolute, given to the Lord Chancellor joyntly with others, by severall Statutes.*

CHAP.

CHAP. I.

Of the Authority Iudiciall of the Lord Chancellor, and Court of Chancery in generall.

9. E. 4. Potentia ordinatam.

1 THe Chancellor hath two manner of powers, (*viz.*) *Potentiam ordinatam*, and *Potentiam absolutã*; *Ordinata potentia*, is where a certain order is obſerved, and ſo it is uſed in poſitive Law.

Potentia abſoluta.

But *Potentia abſoluta*, is *lex naturæ, quæ non habet certam ordinem*, but uſeth all meanes to know the verity, *Et ideo dicitur proceßus abſolutus*, alſo *in lege naturæ requiritur*, that the parties be *præſentes*, or that they be *abſentes*, *per contumaciam*, which is when they are warned, and make default, and in both theſe there muſt be *Excommunicatio veritatis per Cancellar.* 9. E. 4. 14. *Subpœna*, 11. b. *Conſcientiæ*, 26. b. *Juriſdict.* 10.

Default.

Excom. veritatis.

37. H. 6.

2. The Chancery is no Court of Record, in reſpect that it is a Court of Conſcience, and holdeth Plea upon *Subpœna*, but as it tryeth matter upon *Scir. fac.* and Debt, and ſuch like, it is a Court of Record, *Per Priſc. Cap. Juſtic. in Com. Banco*, 37. *H.* 6. 14.

Court of Record.

8. E. 4. Statute proces.

3. If a Statute do ordain proceſſe at the Common Law, the Chancery doth not follow the Form preſcribed by the Statute; but if a Statute doth give a title of right to any man, then the Chancery doth obey the Statute; *per Cancellar.* 8. *E.* 4. 5. This is to be underſtood of generall

Right.

Statutes

Statutes, in which the Court of Chancery is not expresly named.

4. The Chancery may hold plea upon *Scir. fac.* and other such Writs as appertain to that Court, as well out of the Term as in the Term, *per Fitz Harbert in Natura Brevium.* b. *Jurisdict.* 116.

Fitz. Natura brevium.
Term.

5. When the Term is adjourned by reason of sicknesse, or of any other cause; yet the Chancery is never adjourned; for the Chancery is alwaies open, 4. *E.* 4. 21. b. *Jurisdict.*

4. E. 4.
Adjournment.

6. In an *audita querela* sued to avoid a recognizance, knowledged in the Chancery, the Chancellor ought to judge according to the course of the common Law, because the matter commeth before him by Originall Writ, but upon matters depending before him upon Bill, he may judge according to conscience, 5. *E.* 6, *Con.* 72. *casus Rosse & Pope.*

5. E. 6.
Common Law.
Originall.
Conscience.

7. The Ceancellor ought not to take precise knowledge of any surmizes, nor ought not to take away the Jurisdiction of any Court, nor the profit of any person, by credit or suggestions, 6. *E.* 6. *Con.* 74. *casus Wymbish*, &c.

6. E. 6.
Surmise.

8. By these authorities it appeareth, that he hath two powers, th'one ordinary, th'other absolute: By the ordinary, he holdeth plea in Latin, and the Record after issue joyned, is sent into the Kings Bench, to be tryed by Jury.

And this is wholly according to common Law, and in such it is a Court of Record; but the absolute power holdeth plea upon Subpœna, and by English Bill, and by pleading, and so it hath been used, excepting in *Anno* 20. *H.* 6. there are some Bils in French, as appeareth by the Records of that Year, and he intermedleth only with matters

English Bill.
Pleadings in French.

false.

ters of Conscience, and therein it is no Court of Record, and in both these powers he may hold plea out of the Terme.

CHAP. II.

What matters he may hold plea of in the absolute power.

1. THe Chancery in the absolute power, holdeth sute by Subpœna only, of such matters as are nor remediable by the Common Law, *per Prisot. capit. Justic. in Com. Banco* 37. *H.* 6. 14. *& per Jenney Apprentic.* 39. *E.* 6. 2. 6. conscience, 6. *&* 4. *E.* 7. 4. *Subp.* 17.

39. H 6.

No remedy.

2. It appeareth that in *Anno* 21. *E.* 4. Many Subpœna's were used to be sued, and therefore *Fairfax* Justice said; That if the Chancellors would be good Pleaders, there would not be so many Subpœna's sued in the Chancery as there are, for divers of those Chancery matters might be converted to actions upon the case, and so the Jurisdiction of the Common Law Courts should be maintained, as for example; if one do obtain a *Supersed.* of privilege upon a false surmise, an action upon the case doth lye, and there needeth no Subpœna. 21. *E.* 4. 23.

Good pleaders.

Privilege.

Surmise false.

3. The Chancellor must judge *secundum conscientiam, & non secundum allegatum.* For if the Complaintiffe suppose in his Bill, that the Defendant hath done some wrong, and the Defendant answereth nothing; yet if the Chancellor hath knowledge that he hath done no wrong to the Complaintiffe, the Complaintiffe shall not recover at all, *per Cancel.* 9. *E.* 4. 14. *subp.* 11. b.

Secundum conscientiam.

Secundum allegatum.

Default.

9. E. 4.

b. consc. 26. & 6. Jurisdictions 50.

4. One sued by Bill in the Chancery, and he could not prove his Bill, but the proofe of the Defendant was better than his; Wherefore *Grevill* Serjeant said, That the Defendant ought to have Judgment to be discharged, and Complaintiffe to be barred; to whom it was said for the Complaintiffe, That the matter is determinable at the Common-Law, and therefore such Judgements may not be given; and *Grevill* said, That the Complaintiffe shall be estopped to sue so, because it is his own doing; And when one sueth a Bill, he must prove his Bill before he shall have Judgment, although the Defendant never answered: and the Chancellor was of the same opinion; but yet *Conesby* Serjeant, said to the Defendant, That he should never have Judgment in the Chancery upon the matter, but only a *procedendo*. 21 H. 7. 34. H.

21. H. 7.

Estoppell.

Default.

5. By these causes it appeareth, That the Chancellor holdeth plea but of matter not remediable by the Common Law, and that he must judge according to truth, and not upon the default of the party, as the Common Law useth.

6. Note that in ancient time, where the matter was against reason, and the party had no remedy by the Common Law, it was used to sue for remedy in Parliament, and the Parliaments were holden of course, twice every year, but now most of those sutes are in the Chancery, and the Parliaments are not so often holden, *vide Rot. Parl. & Brooke Parl.* 33.

Rot. Parliam. br.

Parliam.

7. The Chancellor said, *Nullus recedat a Cur Cancellar. sine remedio*; but *Fineux* said, *si nullus recedat sine remedio ergo nullus indiget esse confessus*, but the common Law is ordained for many

Remedy without Remedy.

many matters, and some, such as are not remediable by the Common Law, are to be relieved in the Chancery, but divers are remediable by neither; and such are in Conscience between a man and his Confessor, 4. *H.* 7. 4.

Conscience

Doctor & Student.

without Remedy.

Conscience.

8. In many cases where a man doth wrong, yet he shall not be compelled by way of compulsion, to reform it, for many times it must be left to the Conscience of the party, whether he will redresse it or not, and in such case he is in Conscience, as well bound to redresse it, if he will save his sonle, as he were if he were compellable thereto by the Law. As if the Defendant wage his Law in an action of debt, brought upon a true debt, the Plaintiffe hath no means to come by his debt, by way of compulsion, neither by Subpœna, nor otherwise, and yet the Defendant is bound in Conscience to pay him. Also, if the Grand Jury in Attaint affirm a false Verdict, given by a petty Jury, there is no other remedy but the Conscience of the party: Also where there can be had no sufficient proof, there can be no remedy in the Chancery, no more than there may be in the spirituall Court, as Doctor and Student, *Ca.* 18.

Wager of the Law.

False verdict.

Proofe.

9. Note by these two last Authorities, that there are two sorts of *leges conscientiæ*, the one is *lex conscientiæ politicæ*, by which the Chancellor ordereth matters; In which Law of Conscience, there is respect had unto the Lawes, Customes, and State of this Commonwealth, and the other is *lex conscientiæ Divinæ*, by which there is no compulsive relief in this world, but the offendor standeth at the judgment of God only, and this in times past was said to be examinable between the Offendor and the Confessor.

10. Note

Note also that this rule, *Nullus recedat a Cancellar. sine remedio*, is to be expounded that the Chancery giveth remedy for the common law matters, by granting of the Originall Writs, which are for the most part returnable into the common law Courts; and for matter of Conscience, by examining them in the Chancery it self, neither doth this rule any way extend to the Law of Conscience divine.

The Statute made in the 4. *H.* 4. is this; That whereas in Plea reall as well as personall, after Judgment given in the Kings Courts, the parties be made to come upon grievous paine, sometimes before the King himself, sometimes before the Kings Councell, and sometimes into the Parliament, to make new answer thereunto, to the great annoyance of the parties, and in subversion of the common Law. It is ordained, That after Judgment be given in the Kings Courts the parties and their heirs be thereof quiet, untill the Judgment be admitted by attaint or by error, if there be any error, as it hath beene used by the Law, in the time of the Kings Progenitors. *Stat. Anno* 4. *H* 4. *Ca.* 22.

Stat. 4. *H.* 4.

Judgment.

And upon the said Statute is made by Doctor and Student an inference, (*viz.*) There is a Statute, made 4. *H.* 4. *cap.* 22. Whereby it is Enacted; That Judgements given in the Kings Courts, shall not be examined in the Chancery, Parliament, nor else where; by which Statute it appeares, that if any Judgement be given in the Kings Courts against Conscience, that there can be had no remedy, for the Judgement cannot be remedied without examination, and the examination is by that Statute prohibited; Yet this Statute is not against Conscience: for if such

 Judgments

Judgments ſhould be examined in the Chancery before the Counſell, or in any other place, the Plaintiffes ſhould ſeldome come to the effect of their ſute, nor the Law ſhould never have end; to eſchew that inconvenience the Statute was made, *lib. Doct. & Stud. cap.* 18. Note by that Statute, and by this explanation thereof, that the Chancery may not examine, nor intermeddle after judgement is given at the Common Law, and yet the Statute ſpeaketh not expreſly of the Chancery.

CHAP. III.

Whom he may call to be aſſiſtants to him.

1 IN a Parliament holden in the 2d. yeare of *H.* 4. The Commons exhibited a Petition, conceiving that the Juſtices of both the Benches were called into the Chancery from both their places, to help the diſcuſſing of matters traverſed into the Chancery, whereby the Common Law was hindred, and the ſubjects damaged, and therefore they prayed; That it might be Enacted, That when any traverſe of any Office is tendred in any *ſcir. fac.* awarded, that the ſame may be ſent and returned into one of the Benches, there to be diſcuſſed and ended according to Common Law.

To which Petition the King anſwered, the Chancellor may do ſo by his Office, and let it be as it hath been heretofore, by the diſcretion of the Chancellor for the time being, *Rot. Parl. Anno* 2. *H.* 4. *Artic.* 95.

2. The

2. The Statute *de Anno* 4. *H.* 4. is, Let the Chancellor have power, by Authority of Parliament, to call unto him such Justices as it shall please him, and the chiefe Baron of the Exchequer if need be, to provide remedy from time to time, according to their discretion. Stat. *Anno* 4. *H.* 4. *cap.* 9. in most of the time of *H.* 6. the Decrees were entred in this forme, *Consideratum fuit per cur. de Assensu Johannis Fortescue Milit. capitalis Justic. Dom. Regis, ad placita tenend. & diversor. alior. Justic. & Servient. ad legem in Cur. præsent. existent. quod, &c.* And sometime it was *De assensu omnium Justic. utriusque Banci.* And sometimes of one or two Justices, *petition in Cancellar. de temps H.* 6.

Sta 4:H:4

Justices Chief Baron.

Temp.H.6 Decrees

Justices. Serjeants.

In the Chancery upon a Subpœna sued, the matter being doubtfull in Law, the Chancellor adjourned the parties into the Exchequer Chamber, and called the Justices of both Benches to assist him. 27. *H.* 6. 13. *b.* consc. 4. & 37. *H.* 6. b. consc. & 7. *E.* 4. 14. & 22. *E.* 4. b.

27. *H.* 6: 37. *H.* 6. 7. *E.* 4. 22. *E.* 4. *Exchequer Chamber Justices.*

The Lord Chancellor called *Fitz-harbert*, Justice into the Chancery, to assist him in the argument of a Question in Law, arising upon a sute of Conscience, 27. *H.* 8.

27. *H.* 8. *Chancery.*

By these Authorities it is evident, That the Chancellor may, as well in matters concerning the absolute, as ordinary power, call the Justices to assist him, and that either into the Chancery, or into the Exchequer Chamber.

CHAP. IV.

How the absolute power increased, and of the Statutes concerning the same.

Magna Charta.

1 THe Statute of *Magna Charta* is, That *Nullus liber homo capiatur, vel imprisonetur aut disseisetur, de libero tenemento suo, vel libertat. vel liberis consuetudinibus suis, aut ut legetur, aut exuletur, aut aliquo modo disturbatur, nec super eum ibimus, nec super eum mittemus, nisi per legem terræ, Magna Charta cap.* 30. This Chapter is but a confirmation of the custom of the Realme, *lib. Doct.* & *Student, cap.* 7.

Doctor & Stud.

Stat. 5. *E.* 3

2. The Statute of the 5. *E.* 3. is, That none shall be attached, by any accusation, nor forejudged of life nor limb, nor his Lands, Tenements, Goods nor Chatels seized into the Kings hands, against the form of the Great charter, and the Law of the Land. *Statute* 5, *E.* 3. *cap.* 9.

15. *E.* 3. 5. *Stat.*

3. The Statute of 15. *E.* 3. is, That none shal be taken, by Petition or Suggestion made to the King, or to his Councell, unlesse it be by Indictment, or Presentment of good and lawfull men where such deeds be done, in due manner, or by Proces made by writ, or originall at the Common Law, nor that none be put out of the Franchises, nor of their Free holds, unlesse he be duely brought in to answer, and forejudged of the same by way of Law, and if any thing be done against the same, it shall be redressed, and holden for *non-Statute. Anno* 25. *Edw.* 3. *cap.* 4th.

4. The

4. The Statute 28. *E* 3. is that no man shall be put out of any Land or Tenement, or taken, or imprisoned, or disherited, or put to death, without being brought in to answer by due proces of the Law. *Statute Anno* 28. *E.* 3. *cap.* 3.

5. By these Statutes it seemeth that neither the King, Counsell, nor Chancellor, might not atach, imprison, banish, or put to death any man, nor seize his lands nor goods, or cause him to answer, but upon indictment, presentment, or originall, as in the case ensuing.

A Commission was awarded out of the Chancery in 42. E. 3. to Commissioners, authorising them to apprehend a man and his goods, and to commit him to Prison, and because this was done without Indictment, or sute of any party, or other due Proces, it is contrary to the Law, and the Commission was adjudged void, *per Knivet & Thorpe, Captal. Justic.* 42. *Assi.* 15. *& crompton* 67. 42. E. 3.

The Statute of 37. E 3. That though it be not conteined in the great Charter, that no man be taken, imprisoned, or put out of his Freehold, without proces of the law, yet divers people make false suggestions to the King himself, as well for malice as otherwise, whereby the King is often grieved, and divers of the Realm put to great damage and losse, against the form of the same Charter. Wherefore it is ordained, that all they that make such suggestions, be sent before the Chancellor, Treasurer, and his great Counsell, and that they there finde surety to pursue their suggestions, and to incurre the same pain that the other should have had if he were attached, in case that this suggestion be fouud evill, and that then proces of the Law be made against them, withoue being *Stat.* 37. E. 3.

being taken or imprisoned, against the forme of the Great charter. *Stat.* 37. *E.* 3. *cap.* 18. But this punishment is qualified by another Statute.

By this Statute, the abuse of suggestions was reserved, and a form of proceeding appointed, also it seemeth to allow, that the party accused may have punishment, if the suggestion be true, by these words [the same paine as the other should have had if he were attainted.]

Also, though the Statute make mention that the Petition be sent before the Chancellor, Treasurer, and Counsell, yet this hath been expounded of the Chancellor in the Chancery alone, as experience teacheth, and so was the Law taken before the making of this Statute, in *Anno* 12. *E.* 3. 47. b. Jurisdiction 102. nothwithstanding that the Petitioners, were by the indorsement directed to the Archbishop and Counsell, calling to them the Chancellor.

12. E. 3. *Certion Punsell.*

The Statute of *Anno* 43. *E.* 3. is, That some accused persons have been imprisoned, and others compell'd to come before the Kings Counsell by writ or otherwise, upon a greivous paine against the Law; It is therefore assented, that no man be put to answer without presentments before Justices, or thing upon record, or by due processe, or by writ originall, according to the old Law of the land; and If any thing from henceforth be done to the contrary, it shall be void in the law, and holden for error, *Stat. Anno* 42. *E.* 3 *cap.* 3.

Stat. 43. *E.* 3.

11. By this Statute it appeareth, That men had been compelled to come before the Counsell by Writ or otherwise, upon grievous paine, which imployeth the usage of the Subpœna, but it

it was all restrained by this Act.

12. The Statute of 17. *R.* 2. VVhen people be compelled to come before the Kings Counsell, or in the Chancery by writ grounded upon untrue suggestions, the Chancellor for the time being, by and by after such suggestions be duly found and proved untrue, shall have power to ordaine and award damages according to his discretion, to him which is so troubled untruly, Stat. *Anno* 17. *R.* 2. *cap.* 6.

13. This Statute, as it giveth damages against the accuser for it, establisheth the authority of the Chancellor in trying of such sutes, for the makers of the Statute would not ordain punishment for the abusers of such suggestions, unlesse they had meant to allow of the sutes being orderly used, and this Statute seemeth to give the first and greatest allowance to the Jurisdiction of the Chancery by Subpœna, which appeareth by Petition made by the Commons, in a Parliament holden 3. *H.* 8. where they complained, that the VVrits, called Subpœna, *et certis de causis*, were never granted before the time of *R*: 2. the art. of which complaint are as followeth.

In the third year of King *H.* 5: the Commons exhibited a Petition unto the Parliament, concerning the grievances that did arise by the Sutes of Subpœna in the Chancery and Exchequer (*viz.*)

THat these Writs were sued of matters determinable by the Common Law. *Rot. Parl.*

That they were never granted nor used before the time of Richard *the second*, *wherein* John 3. *H.* 6.

Waltham *late Bishop of* Sarum, *and the Master of the Rolls, by his subtilty caused them to be found out, and to begin, that they are contrary to the form of the Common Law.*

That they are a losse and hindrance of the profits which should arise to the King, by the Fees, Fines, Issues and Amerciaments, and other profits in other Courts, if such matters were sued and determined by the Common-Law, because no profit ariseth to the King by the Subpœna, but only 6 d. for the Seal.

That the Justices of both Benches, when they should intend their places, about Pleas and taking of Inquests, for the dispatch of the People, be occupied with the Examinations upon Subpœnas, to the great vexation, losse, and costage of the People *Subjects.*

That the Subjects are long time delayed from the sealing of their Originall Writs, because of the great businesse of the Chancellor about such examinations.

That in such examinations there is great clamor and noise made by men unlearned in the laws without entring any record thereof.

That such sutes will not be ended but by examination and oath of the parties, according to the form of the civil Law and Spiritual Law, in subversion of the Common Law.

That if the Defendant cannot be convicted by their examinations, then they are forced to compound and agree with their adversaries; or else to abide in Ward, or upon Baile, untill they have compounded or agreed.

That if the Defendants cannot be convicted by their examinations, then they are forced to find Sueties for the Peace, which they might have done

done in their Country, without repaire to the Courts.

VVherefore they pray redresse after speciall form in the Bill limited, but this Bill passeth not. *Rot. Parl. Anno* 3. *Hen.* 5. *Art*. 46.

14. The Statute made in the 15. *H.* 6. is, That divers persons have been greatly grieved by writ of Subpœna, purchased for matters determinable by the Common Law of this Land, to the great damage of such persons so vexed, in subversion and impediment of the common-Law, the King will, that the Statutes thereof made, shall be kept after the form and effect of the same, and that no writ of Subpœna be granted, till surety be found to satisfie the party so grieved and vexed for his damages and expences (if so be the matter cannot be made good, which is contained in the nBill.) *Statute Anno* 15. *Hen.* 6. *cap* the 4th. *Stat.* 15. *H.*6.

15. This Statute explaineth, that the making of the great Charter, and the other old Statutes, was to redresse suggestions to the Kings Counsell or Chancellor, where the matters were determinable at the common law, but extendeth not to such as had no other remedy. For this Statute willeth that the old Statutes shall stand, and yet alloweth a Subpœna to be granted, upon putting in of sureties. It is proved also by this President.

Note also that there are no petitions of the Chancery, remaining in the Office of Records, of elder time then the making of the said Statute.

16. One sued by Petition to the King, who delivered

livered the same to the Chancellor, and upon a *scire fac.* the Defendant appearing, took exception, alleging; That his Sute is to recover his Freehold which ought to be at the common law, *& non allocatur*, because this Sute cannot be in any Court but in the Chancery, 21. *E.* 3. 47. *jurisdict.* 102.

21. *E.* 3. *Petition*

Note also that there are no Petitions of the Chancery remaining in the Office of Records, of elder time, then the making of the Statute of the 15. *H:* 6. for the ancientest to oe found are in the 20th. yeare.

So that by this may appear, that the absolute power was feared, and prevented in the time of K. *John*, by whom the *Magna Char.* was granted, and that it was frequented and usurped in the time of *Edward* 3. who so often restrained the same, and it was allowed and established in the time of *R:* 2. who in some part made Reformation thereof.

CHAP. V.

Of what force the Decrees, and Injunctions, Executions, and Punishments of the Chancery be.

39. *E.* 3. *Judgment Reversall Counsell.*

1. IN an Assize, the Parliament wrote to the Justices to surcease, notwithstanding which they proceeded, and awarded the Assize; whereupon the Chancellor did reverse the judgment

ment before the Councell, this reversall was adjudged void, for that was no place where a Judgment might be reversed, 39. *E* 3. 14. b. Judges 13.

It was decreed in the Chancery, by the advice of all the Justices, that the Defendant should bring in an Obligation, wherein the Complaintiffe was bound to him to be cancelled, and because he refused, hee was committed to the Fleete, there to remain untill he would fulfill the Decree, and the Defendant having put his Obligation in sute at the common Law, the Complaintiffe pleaded this Decree in Barre, and it was ruled to be no good plea in Barre, because the obligation had lost his force by the Decree *per Prisot & alios Justic. in com. Banco.* 33. *H.* 6. *Obligation*

And if it had been decreed by expresse words, that the Obligation should lose his force, these words in the Decree would have bin voyd at the common Law, *per Billing* Serjeant, and of the Councellors award a *supersed.* under the Great Seal, reversing the Decree, and commanding the Justices not to proceed at the common law, the same is not to be obeyed, otherwise it is a *supers.* of Privilege, *per Billing & Boef* Serjeants, 37. *Henry* 6. 13. Barre 75. b. con. c. 4 *supersed. Privilege.*

2. If a Feoffee upon trust, refuse to performe the trust, and upon Subpœna, in Chancery it is decreed that he shall reinfeoffe the Feoffor, and he refuse and is committed, if the Feoffor enter into the Land, and the Feoffee bring an Assize against him, this Decree is no plea in Barre to the Assize, *per Laicon* Serjeant. 37. *H.* 6. 13. 37. *H.* 6. *Assise. Decree. Plea.*

3. Note that Judgment was given in the Chancery in Pleas of Debt or of Patents may be pleaded 37. *H* 6. *Judgment. Plea.*

Decree. Court of Record.

ded in any other Court at the common law, otherwise it is of decrees made, thereupon a Subdœna, because it is no Court of Record, in respect of such sutes, *per Prisott: cap. Justic. Co. Ba.* 37. *H.6.* 14.

37. H. 6.

4. Note that if it be decreed that a Defendant shall bring in an Obligation to be cancelled, the Chancellor can do no otherwise but command him to prison, to remain there untill he will doe it, and that is all which the Chancellor can doe, for if the party will lye in prison, rather than deliver the Obligation, the Complaintiff is without remedy, *per Prisot. cap. Just. Co. Ba.* 37 *H.6.* 14.

9. E. 4. Commandement.

5. Note that *Young* Justice demanded this Question, What if the Chancellor should command me upon a pain, that I should not sue my Debtor? *Billing* Justice answered, that he were not bound to obey it; for that commandement is contrary to Law: 9. *E.* 4. 53. b. Judges 22. but this is meant of a commandement, no Bill being exhibited.

22. E. 4. Injunction Judgment.

6. In an action of Trespasse, the Plaintiffe recovered by verdict at *nisi prius* before Judgment; the Chancellor granted an Injunction, commanding the Plaintiffe that he should not proceed to Judgment upon pain of 100l. *Fairfax* Justice said, that although the Injunction were against the Plaintiffe, yet his Attorney might pray Jument, *vel è contra*: *Hußey* chief Justice of *England* said, that they had communed upon the matter, and they could see no hurt that could come to the Plaintiffe, although he prayed Judgement contrary unto the Injunction, for the Law doth not give any forfeiture of the summe conteined in the Subpœna, and if he be committed to the Fleet

Forfeiture. Subpœna.

Fleet wee will presently grant a *habeas corpus* ret before us, and then we will dismisse him, and the Justices said, though the Chancellor would not disallow the Injunction, yet they would give Judgment if the party would desire it, *quod notum Banco Regis*, 22. *E.* 4. 37. 6. Judgement 86. *Habeas Corpus.*

7. King *Richard* the third called before him into the Inner Starchamber all his Justices, and demanded of them this Question among others, That whereas *Tho. Staunton* had Iudgement in the Chancery, to recover against *Tho. Gate* certain Lands and Tenements, and in execution thereupon, yet *Tho. Gate*, contrary to the judgment and execution entred into the Lands; where unto the chief Justices answered, That if *Gate* had notice of the Judgment, then at al times after such notice the Chancellor might compell him by imprisonment. 2. *R.* 3. 9. *2. R. 3: Judgment. Notice. Imprisonment. 2. R. 3. 9.*

8. A Feoffee upon trust, was enjoyned to make estate to the Feoffee before a certain day, Subpœna 100l. and he did nor perform the Injunction, and *Hussey* chief Justice of *England*, and *Vavisor* Justices, and divers Apprentices said cleerly, that there could no *scire fac.* or other proces be awarded for the King against the party, to levy the 100l. because it is but a pain; and if the Defendant make default in a Supœna, the pain is not forfeited, for it is put in the writ but only *interiorem*, but if the party make default, the Chancellor may assesse a Fine upon him, according to his discretion, and that assessement is a Judgment, and a *scire fac.* shall be awarded upon that, in such sort as it may be upon Recognizance in *Cancellar.* 10. *H.* 7. 4. b. Const. 29. *10. H. 7. Injunction. Subpœna. Forfeiture.*

10. Note

27. H.8. *Decree Right. Person.*

10. Note that a Decree in Chancery doth bind the right of the party, but doth not only bind his person to obedience, that if he will not obey, the Chancellor may commit him to ward untill he do obey, and that is all which the Chancellor may doe, but Judgement given in the Kings Court, Common-pleas, and other Courts of the common law, do bind the right of the party, *per Knightly* Serjeant, *in Canc*, 27. *H.* 8. 15. Judges. 1. *&* *b*. Judgment 2.

Imprisonment.

27. H. 8. *Injunction Execution. Obligation.*

11. If an Injunction in Chancery be made, That I shall not sue S I. if I dye my Executors may sue him notwithstanding, for they are not bound thereby: For if I be bound by Obligation that I shall not sue S I. if I dye, my Executors may sue him, and it is no forfeiture of the Obligation, *per Fitzharbert Justic. in Canc.* 27. *H.* 8. 16. conse: 1. and *Brook* in abridging the case, doth think it were hard, that the Chancellor should enjoyn the Heirs or Executors, although they were expressed in the Injunction 27. *H.* 8. 15. But at this day the form of Injunctions doth by expresse words extend to bind the Heirs, Executors, Counsellors, Attorneys, and Solicitors of the party, saving that the Serjeants of the law, do take themselves to be exempted by Warrant of their Oath, by which it seemeth also, that they should not be of Counsell with any Complaintiffe in the Chancery.

Brooke. Heire. Executor.

n.[9]

Fleta.

12. Note that in the Book called *Fleta* which was made in the time of King *Edw.* the first, by all the Justices, either at such time as they were in the Fleet, or else at such time as they inhabited in the street called Fleet-lane, it is thus written. *Tot erant formulæ Brev. quot sunt genera actionum, quia non poterit, quid sine bre. agere præcipue*

cipue de libero tento suo quia non tenetur quis respondere sine brevi nisi gratis voluerit, & cum hoc fecerit quis ex hoc ei non injurabitur volenti enim & scienti non fit injuria.

13. By this it is to be collected, that the right and possession of land, may be decreed in the Chancery, in a sute commenced by the parties consent, as appeareth also by a President following. *Consent.*

14. *Agnis Lumbard* being expulsed without proces out of Tenements in *Beverley* by *Thomas Lumbard*, they submitted themselves to the Decree, Order, and Award of *Michael De la Poole* Earle of *Suffolk*, Lord Chancellor; who by writing under his Seal decreed, that she should have the Tenements, rents, and arrerages thereof during her life, and an Injunction Subpœna was awarded to the tenants to pay the rents and arrerages accordingly, and to certain tenants unto whom *Tho. Lumbard* had leased against the will of *Agnis*, that they should not meddle any more therewith, or else they to shew cause to the contrary, in *decimaquinta pascha*, also it was then decreed by the advice of *Robert Belknap*, chief Iustice of the Common-pleas, and of *John de Waltham* Master of the Rolls and others, that she should be put in full and peaceable seizin thereof, whereof a Writ Patent by warrant of the Counsell was directed to the Bailiffes, Aldermen and Burgesses of *Beverly*, to put her in seizin and possession, and to defend her therein, *claus. Anno 9. R. 2. pro Agnet Lumbard.*

CHAP.

CHAP VI.

Whether the Chancellor may intermixe his power absolute, with the ordinary.

8. E. 4. Privilege. Judge. Temporall Conscience. And the Debtor was discharged of the execution, and prayed his damage against them both, and the Master of the Rolls said, although by the Commō law damages shold be adjudged against them both. Audita querela Damages.

1 IF an attachment of Privilege be sued against an Attorney in the Chancery, this attachment is in the nature of an action at the common law, and the Chancellor said, that in that sute he had two powers, one as a Iudg temporall, another as a Iudge of Conscience, for if it appear unto him upon the matter shewed in the sute that there is conscience, he may judge thereof according to Conscience, but all the Iudges said that he might not Iudge according to Conscience, because it is to be ruled according to common law, and if there be Conscience in the matter, then the party grieved may exhibite a bill thereof, and in that the Chancellor may judg according to conscience, 8. *E.* 4. 66. consc. 15. Jurisd. 112.

2. One was bound unto I S. and I D. in a stat. staple, and I S. released afterwards, I S. not knowing thereof sued execution, the Debtor sued an *Audita querela*, and upon the *scir. fac.* I S. and I D. being demanded in the Chancery I D. made default, and that was ruled to be a default in them both. Yet this being the Court of Conscience, we as well judge according to conscience, as to law; and it were against conscience that he which had no knowledge of the release, should pay damages; But *Chock* Iustice said, that in this case they are and must be Iudges only according

cording to Law, and the Master of the Rolls said he would be advised, 11. *E.* 4. 9. b. dammages.

Conscience. Common Law.

3. One traversed an office in the Chancery, and being at issue was sent into the Kings Bench to be tryed, & the party came and shewed, that the King had granted the Land before, & so he should have had a *scir. fac.* against the Grantee, wherefore he pursued not his Traverse, and it was demanded of the Justices if he might have a *scire fac.* out of he Chancery upon the first Traverse, and they all answered that he might, because that in pleading a default of form should not in any case be prejudiciall in the Chancery, for it cannot be called a Court of conscience, if the act of a Clerke in pleading should cause the party to lose his sute and his expences.

4. In *Camera Scaccarij*, 14. *E.* 4. 76. traverse d' Office, 39. *&* 6. *Jurisdict.* 76. Upon Petition made to the King, and by him delivered over to the Chancellor to do right, appeared that the Kings Tenant being Tenant in Taile, had granted with warranty, Lands, and an advowson to a College, and that the King had Presented by colour of the Wardship of the Heir, contrary to the grant, and the Incumbent pleaded for the King, That the Heir had no Lands discended from his Father, and that the Wardship was no Barre; but because it appeared by divers Offices returnd into the Court, that Lands to the value of 1000. markes were discended to the Heir, Therefore the Court awarded in Conscience, That the College should be restored to the Presentation without tryall by Jury, that the same assetz did discend. 43. *ass.* p. 21. *Agr.* 75.

14. E. 4.

Traverse of Office.

Mispleading.

Hereby it appeareth, That although the Chan-

 cellor

cellor may not mix his absolute power with the ordinary concerning the right of the cause, yet he may somewhat use the same in matters of expedition of proceedings.

CHAP. VII.

The form of the Pleadings.

9. E. 4. ONe sold certain Wool to I S. and I D. for 3. l. and I S. had all the profit thereof, and they were bound in severall Obligations; Afterwards the Creditor sued I D. the surety, upon one of the Obligations, being 300l. who sued a Subpœna, and shewed in his Bill, that the Creditor was satisfied of a great part, and had given long day for the rest, and exception was taken to the bill by *Catesby* Apprentice, because that the Complaintiffe alleged, that a great part of the whole summe was paid, and shewed not how much was paid, and it may be that the money paid was for other obligations and not for this; also he hath not shewen what day was given to I S. The Chancellor said, that it did not lye in the notice of I. D. what summe was paid, or what day was appointed; and therefore he cannot declare it, but it must appear upon the examination of the Defendants confidence, but he shall shew certainly such matter as lyeth in his knowledge.

Obligation

longer day,

Incertainty.

the sum,

Also in this Court it is not requisite that the Bill be all certaine, according to the solempnity of the Common law; for it is but a Petition. 9. E. 4. 41. *Subp.* 12. *et b. Conse.* 3.

Notice the day certainty

2. Note

2. Note, that the Chancellor said, that a man shall not be prejudiced by mispleading, or for default of form, but according to the verity of his matter; and the Chancellor must judge *secundum conscientiam, & non secundum allegat.* For if the Complaintiffe suppose by his Bill that the Defendant hath done him wrong, and the Defendant answereth nothing, yet if the Chancellor have knowledge that the Defendant did no wrong to the Complaintiffe, the Complaintiffe shall not recover any thing, 9. *E.* 4. 14. *Snbp.* 11. *Jurisd.* 51. *& Consc.* 26.

3. Mispleading, nor default of form, shall not be prejudiciall to the Chancery: *omnes Justic. in Camera Scacc.* 14. *E.* 4. 7. *b. traverse d' Office* 39. *& b. Jurisd.* 76. *Mispleading.*

4. A Subpœna was sued against *T. Tate*, and before answer *Tate* exhibited a Bill against the Complaintiff, to have an estate in the same land, and because his Bill came in last, he was forced to put in his answer to the first Bill, and so they were at issue; And afterwards it was shewed to the Court, that *Tates* Bill did vary from his own answer in two points, which were the ground of the matter. And it was holden by the Chancellor, by the advice of the Kings Serjeants, that the answer should stand, and it was notwithstanding the Bill, and it was objected, that if the matter were fond for *Tate*, then he should recover upon his Bill, but now he cannot doe so, because his answer is directly contrary. Whereunto the Kings Serjeants answered, That *Tate* might be suffered to amend his Bill, according to his answer, because he was sworne upon his answer, but not upon his Bill. *quod nota* 14. *E.* 4. *subp.* 15. 14. *E.* 4. *Bill.* *Answer.* *Variance.* *Amend.*

16 E.4. *Answer.*

5. A Bill was abated for insufficiency of matter, and the Complainciffe shewed new matter, and the Defendant was awarded to answer to it, *per Cur. Cancellar.* 16. *E.* 4.

16 E.4. *Answer.*

6. If a *sub pœna* be sued against 4. Executors, and one of them doth onely appear, he shall not be forced to answer without his Companions, but *Markeham. Capit. Iustic. Angl.* But *Rogers* Apprentice said, that he might answer alone if he would, without his Companions, but shall not be compelled thereunto. 8. E. 4. 5. *Brooke, Conc.* 15.

8 E.4. Executors *Answer.*

CHAP. VIII.

What Costs and Damages shall be awarded in the Chancery.

43 E.31

1 NOte that where a Woman is onely endowed by reason that her first Dower was recovered from her she shall recover no damages, for damages are not awarded in the Chancery *per Cur. Cancellar. in præsen. Iust.* 43. *Asss. p.* 32. & 43 *E.*3.2. Damages 195. & *B.sc. fa.* 161

Damages.

W. Fishlack exhibited a Petition to the King against the Prior of *Windham*, that his ship sailing to *Lon.* was assaulted by Enemies of *France*, that he & his Mariners for fear fled to the land by boat by *Hapsburgh* in *Norfolk*, and the ship being spoiled by them was cast up at *Hapsburgh* in the Priors land, who seised the same as wreck,

The

The King delivered the Petit. by writ to the Admiral, willing him to do justice, who proceeding therein upon sute of the Prior made to the King was commanded to certifie his proceedings before the King and his Councel, and to warn the parties to appear at a day certain in the Chancery, where upon hearing, it seemed to the Justices and Kings Serjeants, and other Lawyers being there, that the ship, goods, and chattels ought not to be accounted wreck. and Judgement was given that *William Fishlack* should be restored thereunto, and to his damages, costs, and expences which he had sustained by the Priors default in the prosecuting, and that he should satisfie the Prior and his servants for their reasonable costs imployed in saving the ship and goods. *Clauss. An. 5 R.2. R.6. pro W. Fishlack de Bacton.*

Wreck, Damages, Costs.

It was enacted *Anno* 17 *R.2.* that where people be compelled to come before the Kings Councel, or in the Chancery by writs granted upon untrue suggestions, the Chancellor after that such suggestions be found and proved untrue shall have power to ordain and aware damages after his discretion, to him which shall so unduly be troubled, *Stat. Anno* 17 *R.2. c. 6 accusation* 8.

17 R.2 Damages.

It was enacted *Anno* 15 *H.6.* that no writ of *sub pœna* shall be granted till Surety be found to satisfie the party grieved for his damages and expences, if the matter cannot be made good which is conteined in the bill, *Stat. Anno* 15 *H.6 c. 4. accusac* 9.

Stat. 15. *H.6. Surety.*

5. It was used since these Statutes to enter the Sureties upon the bill in this form, *Plegii de prosequend. T. W. de H. in Com. Midd. Ar. &*

J. K. de B. in Com. Midd. Ar. or else in this form, *Memorand. qd. 23 die Januar. An. R.R. H.6 34. E F. de paroch. de S. London Fuller, & T. J. de London Yeoman coram ipso Domino Rege in Cancellaria sua personaliter constituit manuceperunt pro præd. querent. quod si ipse materiam in hac supplicatione content. verum probare non poterit tunc ipsi omnia damna & expensß quæ sub pœna dict. d f. in hac parte sustinebit per consideration̄em Curiæ & satisfaciet juxta formam statuti inde editi*, but this is now neglected. *Pe. ic. in Canc. de An. H. 6.*

Damna, Expensß.

7 E 4. *Bill insuffic,*

6. Note if a Bill be exhibited and the Def. demur upon the insufficiency thereof, and by the Court the bill is awarded insufficient, in that case the Def. shall have no costs or damages by the statute, because the statute giveth the damages where the bill is found true or untrue, but in this case the truth is not tried, 7 *E.* 4 14. *Dam.* 44. *b. Costs* 19. *& b. Damages* 163 *per Cancellariam & Justic. utriusque Banci in Camera Scaccar.*

Costs, Damages, Bill untrue

7 E. 4. *Grant to use costs.*

7. Note that the grantee of Lands, or Goods upon trust, is not compellable in consc ence to sue or defend, but onely at the costs and charges of the grantor, 7 *E.* 4 29.

11 E. 4. *Audit. que. Damages.*

8. It seemeth that if one sue execution upon a statute staple, where he hath released the duty before, and the debtor sueth an *Audit. quer.* against him to avoid the Execution, and the creditor maketh default, he shall pay damages, *vid.* 11 *E.* 4. *hc fo.* 46. *a casu secundo.*

23 E 4. *Injunction.*

In an action of Tresp. the Plaint. recovered by verdict, and the Plaint. shewed in the Kings bench, that the Chancellor had awarded an Injunction against him, whereby the sute had not

not long delayed, and now (depending the Injunction) he prayed his Judgement in the Kings Bench, and it was given, but the Court would not afford any damages for the Plaint. vexation in the Chancery, by the Injunction, in *Banco Regis* 22 *E*.4. 37. *b. Damages* 138. *& b. Iudgement* 86.

Kings Bench, Iudgement Damages.

10. In an Action of Trespas the Defendant was found guilty by verdict, and the Plaintiff shewed in the Common place that the Defend. had sued a *sub pœna* in the Chancery, and had obtained an Injunction, that he should not proceed at the common Law till the matter in the Chancery were tried, and how by means of the sute in the Chancery the Plaintiff had spent ten Marks, and now the Injunction is dissolved, the Plaintiff dismissed to the common Law, and therefore he prayed the Justice to increase the costs because of this vexation. And *Brian* the ch. Just. awarded that the Plaintiff should recover three pounds for his costs, besides his damages in *com. banco*, 21 *E*.4. 78 *b. consc.* 22. *& b. costs.*

21 *E*.4.

Common place. Injunction

Dismission

CHAP. IX.

Reformation and Reversal of Iudgements and Decrees made in the Chancery.

37. H. 6. *Decree, Parlament Error.*

1. NOte that upon a Decree made in the Chancery by *sub pœna*, the party may have a writ of error in the Parliament to recover the same if it be erroneous, in such sort as he may have to reverse Judgements erroneously given in the Kings Bench *per Chock* Serjeant, 37 *H.6.* 13. *Iurisd.* 53. *& error* 95. But note that *Brook* abridgeth the case, that *Prisot* the chief Justice was of the contrary opinion, which is not to be so collected by the book, but by implication; yet may it seem that no writ of error doth lie, but a petition to the Parlament in the nature of a writ of error, but *Prisot* said that Judgements in the Chancery upon *scire facias* to repeal Patents and pleas or persons priviledged are reversable by Parlament, because they are Judgements, but the decrees are not.

Brook.

Petition,

Iudgement Record.

27 H.8:

2. *Cholmly* Serjeant said, if a decree be made in the Chancery, that the Chancellor hath not power to reverse that decree in the same Court, but it must be redressed in the Parlament, for Judgement given in the Kings Bench, Common-place or Exchequer, are not reversable in the same Court but in a higher Court.

Decree, the same Court, Parlament

Order, good cause.

But *Knightley* Serjeant said, that a decree was but an Order taken by the Court for the time the

the which upon good causes shewed may be redressed in the same Court, but *Devistall* Serjeant said, that if it might be so, there would be an incessant confusion of all causes, wherefore the Chancellor cannot reverse an absolute Decree, but he may reverse a Decree which is made with a *quousque*; for an absolute decree is much like a definitive sentence given in the spiritual Court, which cannot be redressed in the same Court, but by application into a higher Court; and the Kings Secretary interrupted him to speak any further of the authority of the Chancery. *In Cancell.* 27 *H.*8. 6.

absolute decree, definitive, appellation.

In a writ of error to reverse a Judgement of petition in Chancery, the Defendant took exception that the Judgement given in the Chancery might not be reversed in the Chancery, being all one Court, but in the Parlament. *Et non allocatur exception. per Cur. Cancell.*42. *ass.p.* 22.*b*,*error.*131. It seemeth that this was not properly a reversall of the petition, but rather and is like to the case ensuing.

2 R.3. patent, scire facias error, the same court, reform. Revocation.

If the Lord Chancellor grant a patent of land and after make a patent to another of the same land, the second patent is revocable in the Chancery by *scire facias*, but not by writ of error, for a Court may reform, but not reverse their own judgements, 2 *R.*3.

2 R.3. patent, scire facias, error, the same court, reform.

A statute Merchant was acknowledged in the Chancery, the money payable *Anno* 16. and the party sued execution, and his writ supposed the same to be payable, *Anno* 14. and by this sute the Ecclesiastical was put out of power, and he sued a writ of error in the Kings Bench, and it was awarded that he should be received to the sute, 18 *E.*3. 25. *error p.* & 17. *ass. p* 24.

18 E.3. Stat. Merchant, Kings Bench,

And

13 Eliz. common Law.

And *Plowden* reciting the case saith, that if upon sutes in the Chancery according to the order of the common Law there be error, that shall be reformed by a writ of error in the Kings Bench, which is a higher Court, 13 *El. Com.*393.

The

The Second Part of the Absolute Power.

CHAP. I.

Of Lands.

IF two Copartners bring a Formidon, and one of them by Covin between the Tenant and him will not joyn with the other in a true Declaration, the other may compell her by *sub pœna* to joyn in the true Declaration, for else the Action would abate. *per Moyle Iustice & Ienney Serjeant, in Co. Ba. 6 E.4. 10.b.cons.12.* *6 E.4. Coparceners Covin.*

2. If two men have a wood joyntly, and one of them felleth the wood, and keepeth all the money to himself, his fellow hath no remedy by the Law, for as when they took the wood joyntly, they put each other in trust, and were contented to occupy together, so the Law suffereth them to order the profits thereof accord- *Doct. & Stud. Iointenant all the profit.*

ing

ing to the truſt that each did put in other, and yet if one took all the profits he is bound in conſcience to reſtore the half to his fellow; for as the Law giveth him right onely to half the land, ſo it giveth him right onely in conſcience to the half profits; and yet it cannot be ſaid that the law is againſt conſcience; for the Law willeth not that one ſhall take all the profits, but leaveth it to their conſcience, *Lib. Doct & Stud. cap. 19.*

Conſcience

Law.

Doct. & Stud. eldeſt ſon.

3. In many caſes conſcience ſhall be ruled after the Law; as the eldeſt ſon ſhall have his fathers land by conſcience, as he ſhall in law; and ſo he ſhall in law, and ſo in Burgh Engliſh, the youngeſt ſon ſhall enjoy the land both in law and conſcience; and in Gravel-kinde all the ſons and daughters ſhall inherit together, and there can be no other reaſon given why it ſhould be ſo in conſcience, but becauſe law or cuſtome is ſo, *lib. Doct. & Stud. 2. c. 15.* for divers good cauſes upon that ground.

Gravel-kinde all children.

Law, Cuſtome,

4. *Tho. Parrick* and *Agnes* his wife exhibited a bill, conteining that one *Beatrice* whoſe heir *Agnes* is, was ſeized, and took to husband *Thomas Bradley* preſent in the Court, and dyed, *Bradley* continued as Tenant by the curteſie of *England*, untill now of late he claimeth and publiſheth that he hath fee-ſimple, and withheld the Charters; wherefore they prayed that he might he examined what eſtate he claimeth, and to be recorded, and to knowledge what Charters he hath, & to deliver them to the complainants defendant *Diſmiſſum eſt à curia quietus ſine die per conſi. cur. co qd materia in hac ſupplicatione contenta non eſt ſufficiens ad ponendum ipſum defend. ad examinat. ſuper eundem*

Preſent in Sect. Tent. curteſie. claim, fee-ſimple.

eundem petition. Pet. in Canc. 20 *H.6.* the defendant hath authority by law to keep the Charters, and although in words he claimeth fee-simple, yet because it is not alleadged that he did not any act to the dis-inheritance of the complainants, therefore it seemeth he was dismissed.

Charters.

Dismission.

CHAP. II.

Of Lands in use or trust.

LAnds in *Lond.* were devised to the devisors son and three others in fee, and that one of them should have the profits during his life, the devisor dyed, the son and heir sued a *sub p.* against the two others, to compell them to release unto him, because the use of the land ought to be in him after the death of the per nor, and it was thought reasonable *per omnes Justic. in camera Scac.* 3 *H.6. devise* 22. & 8 *feofment al uses* 49. So it is if the same had been done by Feofment.

3 *H.9.*

Rem. of use

Use for life

Release.

2. One made a Feofment upon confidence, and afterwards declared his will to the Feoffee that one of the daughters should have the land after his decease, and after that he came to the Feoffee and told him that his said daughter would not be married by him, and therefore he revoked his Will, and willed that his other daughter should have the land by conscience. *Laicon*, when he made his first Will, the first daughter had presently an interest in the land, which

31 *H.6.*

Revocation of will.

Revocation of use.

quid pro quo.

which he would not defeat; as if one make a Feofment to the use of a stranger, he cannot afterwards revoke that use. *Illingworth*, there appeareth not any cause why the first daughter should have the land; and therefore seeing the Feoffor had not *quid pro quo*, it is no bargain, but of his meer will which he may by good conscience change, as if the Feoffor had afterwards fallen into poverty, he might with good conscience compell the Feoffee to re-feoff him again, *Prisot ch.* Justice of the Common-pleas, when the Re-feoffor had once declared his Will, and willed the land to his daughter, the Feoffee standeth presently subject to the will of the daughter, and is discharged of the Feoffee; and such a Will is as strong as a Feoffee, which is annexed to a Livery of Seizin, *Fortescue* chief Justice of *England*, the Feoffor may have his will, if there be special cause, otherwise not; as if after the first Will the Feoffor had a son born he might well have changed his Will, and given it to his son and heir, for there is a reasonable cause of his claim, and so it is if the daughter had become a Felon, 35 *H.6: sub pœna.*

fall into poverty.

Special cause.

Son born.

Felon after feofment.

Felon, 15 Eliz.

3. *Stac. consc.* note that the better opinion is conceived to be, that he may revoke the first Will, 15 *Eliz. Dyer.* 3. 25.

3 H.6: use after feofment.

4. Note, it was agreed, if any infeoff another, he may declare his Will unto him afterwards, and appoint the use to whom he will; 31 *H.6. sub pœna* 23. *Stach. consc.*

5. If I infeoff one to perform my last Will and himself a stranger, I have no cause of *sub pœna* against the Feoffee, but I may sue my first Feoffee and recover in damages for the value

lue of the land, *per Yelverton & Wilby, Clericis Rotulorum*, and this is meant where the second Feofment is made *bona fide*, in which cause I have no remedy for the land, and so it was adjudged in the Cardinal of *Winchesters* case, but if the second Feofment had been also upon trust, then I might recover the land by *sub pœna* against the second Feoffee, 31 *H.6. sub pœna* 19. *Stach. sub pœna.*

Enfeoff a stranger, second Feoffee, Damages, bona fide, trust.

6. If I make a Feofment upon trust that the Feoffee shall infeoff my heir when he cometh to full age, and the Feoffee infeoffeth a stranger *bona fide* to the intent to dis-inherit my heir, there the trust is deteined, and the heir is without remedy against the second Feoffee by *sub p.* or otherwise; but if the Feoffee had retained the land himself, and refused to infeoff the heir at his full age he might have compelled him thereunto by *sub pœna per Dunby Just. in com. banco*, 33 *H.6.*15.

33 *H.6. Enfeoff strangers, bona fide, second feofment, refuse to infeoff.*

7. *Richard Frank* made Feoffees to the use of the last Will of him, and *Agnes* his wife, and they dyed, having issue *John* and *Izabel*; *John* was outlawed of murther, and also delivered to the Abbot of *westminster*, as a Clerk attainted for robbing a boy called a (*Monstral*) out of the Church of the Prioress of *Clerkenwell*; and lastly was indicted and outlawed for Felonies and Treasons, and during his life *Isabel* sued a *sub pœn.* against the Feoffees to be infeoffed of the land, as next heir to the land, the Feoffees upon their Oaths confessed the trust, wherefore it was decreed by the Court, by advise of *John Fortescue* Knight chief Justice of the K. Bench and divers other Justices and Serj. that the Feoffees should execute an estate

33 *H.6. pet. in law.*

Outlawed, Clerk attainted, outlawed of treason.

to

next heir. to *Isabel* and her heirs, *qa nota petic. in Canc. Ann.* 33 *H.6.* 2 *pts.*

37 H.6. *Refuse to infeoff, Imprisonment:* 8. If the Feoffee upon trust do refuse to perform the trust by denying to re-infeoff the Feoffer, he shall be compelled thereunto by *sub pœna*, and decree and imprisonment, *per Liac. Ser.* 37 *H.6.*13.

37 H.6. *Will, 2 Feoffees.* 9. One having four Feoffees seised to his use, sold his land to *J. S.* and said to two of his Feoffees, that his Will was that they four should make a Feofment unto *J.S.* accordingly, which two Feoffees notified his Will unto the other two, who refused to joyn in the Feofment; whereupon the first two alone made a Feofment to *J.S.* of their parts, and afterwards, the Feoffer sold the lands to *J.D.* and required those two Feoffees which refused before to infeoff *J.D.* who did so accordingly, and *J.S.* sued a *sub pœna* against the two Feoffees which refused, and because the two Feoffes did but onely give notice to the other two Feoffees of the Feoffers Will, and did not tell them that the Feoffer had commanded them to infeoff *I.S.* and without commandment they were not compellable to make the Feofment, therefore the two Feoffees which so refused were dismissed *per canc. & omnes Inst.* 37 *H* 6.35. *sub pœna b. consc.*5.

Notice.

commandment.

37 H.6. 10. If the Feoffer do send his servant to his Feoffees commanding them to make estate according to his Will, the Feoffees are not bound to make a Feofment without specialty proving his Will *per plur. Instic.* 37 *H.6* 35 *sub pœna* 1 *b.consc.*5.

37 H.6. *refuse to take.* 11. One willed that his Feoffees should make an estate for life to *I.S.* the Remainders. to *I.D.* in

in fee, *I.S.* refused to make the Estate for life, *I.D.* may compell the Feoffees by *sub pœna*, to limit an estate in rem. unto him after the death of *I. S. per Ienney* Serj. & *Fincham* apprentice, and *Fincham* said, that the Feoffees ought to make an Estate to the heir of the Feoffor during the life of *I.S.* if *I.S.* did refuse the rem. to *I.D.*

Remainder.

12 And *I.D.* may compell the Feoffees by *sub pœna* to grant the rem. in the life of *I.S.* for else by the refusall of *I.S.* he should lose his rem. otherwise it is if a man devise lands by his Testament to *I.S.* for life, the rem. to *I.D.* further if *I.S.* refuse, yet there needeth no *sub pœna*, because he may enter by the law by force of the Testament, 37 *H.6.* 36. *sub pœna* 16. *consc.* 5.

Refusall by Tenant for life.

Testament

13 If any Feoffee in trust be disseized, I may have *sub pœna* to compel him to bring Assize against the Disseisor *per Moile & Danvers Iustice in communi banco*, 2 *E.*4. 2.*b.* *consc.* 5.

Disseizin in assize.

14 If If I be bound by obligation to *I.S.* to the use of *I.D.* that I shall infeoff *I.D.* for certain lands, if I do offer a Feofment unto *I.D.* and do refuse to receive, the obligation is thereby discharged, but *I.D.* may have a *sub pœna* to compell me to infeoff him notwithstanding *per Danby Capit. Iustice de communi banco*, 2 *E.*4.3.

2 *E.*4.

Obligation refuse to take.

15 If any Feoffee upon trust infeoff a stranger, and do sell the land to him for money, yet if he give knowledge unto the stranger, that he himself had it onely upon trust, I may compell the stranger by *sub pœna* to perform my VVill, 5 *E.*4. 76. *Feofments al use* 32. *sub pœna* 2.

5 E.4. *Youngest son.*

16 If Tenant *in Burgh English* infeoff one to the use of the Feoffor and his heirs, the youngest son shall have a *sub pœna*, to recover the land but not the eldest, 5 *E.* 4. 7.5. *Feofments al use* 32. *sub pœna* 2.

5 E.4. *Mothers side, heir of the fathers side.*

17 If one seized of land which is descended unto him from his mother do make a Feofment upon trust, and then die without issue, the heir by the mothers side shall have a *sub p.* to recover the land, not the heir by the fathers side, 5 *E.*4.7.*b. Feofments al use* 32. *sub pœna* 2.

5 E.4. *Remainder,*

18 If a Tenant in tail (the remainder being a stranger) do make a Feofment to his use, and die without issue, having declared his Will, the *sub pœna* belongeth to such person as is limited by his VVill, and not to him that hath the remainder, but if he have declared no VVill then he in the remainder should have had the *sub pœna, quære E.*5. 47 *sub pœna* 26. *Feofm. al use* 32. But *Brook* thinketh that he in the remainder shall have no *sub pœna* in neither case, because he may have his remedy at the common Law.

Tenant in tail, declare Testament.

Common Law.

5 E.4. *Husband and wife.*

19 If the Husband and the VVife be seized in the right of the VVife, and the Husband make a Feofment, although he declare no VVill, yet the VVife shall not have the *sub pœna*, because as *Brook* thinketh;

no consid. use not expressed.

20 VVhen a Feofment is mede without any consideration and no use expressed, the Feofment shall be intended to be to the use of the Feoffor, and his heirs; and also the VVife may have her *cui in vita* by the common Law, 5 *E.*4.76. *Feofments al uses* 32. *sub pœna.*

21 If

21 If a man have issue, a Son and a Daughter by one Wife, and a Daughter by another Wife, and maketh a Feofment to his use, and dieth; if the Son do take the profits, and die, his Sister by the whole Bloud shall have the land by *sub pœna*, and the other suffer nothing, because the rule, that *Possessio fratris de feod. simplici fecit sororem esse hæredem*, doth extend to uses, as well as to lands, 5 *E.*4.7. *sub pœna* 3.*b. Feofment al uses* 33. *& b. discent.*36. *& Com.* 4 *E.*6.58. *per Mountague capit. Justic. de communi banco*; and if the Father had devised his land to a stranger, this would have been no *possessio fratris*, because the freehold of the use was in the stranger; but if he had devised it only for years, it would have been a good *possessio fratris*, 5.*E.*4.7. *sub pœna* 36. *Consc.*12. *& by descent.*

4 E.4. Half bloud. Take profits, Possessio fratris. 4 E.6. estate for life, for years.

22 If *I.S.* make a Feofment in trust, and be afterwards attainted of Felony, the lord of whom the land is holden shall not have the *sub pœna* by *Escheat*, 5 *E.* 4. 7. *B. Feofment al use* 34.

5 E.4. Attainder, Felony, Escheat.

23 Note that the King cannot be infeoffed to any other mans use although it be so expressed, neither doth any *sub pœna* lie against him, but the Feofment is good, and the limitation of the use void, *per Markham & Brian capit. Iustic.* 5 *E.*4.7. 7 *E.*4.17. *Office* 2.

5 E.4. 7 E.4. King use void.

24 One being infeoffed to the use of a Woman, she took a Husband, and the Husband sold the land to a stranger, and the Woman received the money, and the Feoffee at their request infeoffed the stranger, the Husband died, and the Wife brought a *sub pœna* against the Feoffee, who shewed the matter, and the Wife

ayly 89.

7 E.4. *Husband and wife.* demurred; *Starkie* Apprentice, if the Husband make a Feofment of the Wives land, she shall avoid it by a *cui in vita*; and so if the Husband do sell the VVives use in the land, this Sale shall in conscience be said the Sale of her Husband alone, and not of them both, and therefore the *sub pœna* doth lie; which saying was affirmed of all the Justices of both the Benches; and the Chancellor said, that all which a VVoman Covert doth shall be esteemed to be done for fear of her Husband, and the receipt of the money by her is not material, because she cannot have the free disposition thereof, and the Complaintiff prayed that the Defendant might be committed unto Prison untill he made satisfaction; and the Chancellor said, that the Complaintiff might have a *sub pœna* against the stranger which bought the land; but *Yelverton* said, that she might have a *sub pœna*, if the stranger had knowledge of the wrong and deceit done to her, but otherwise not. The Chancellor answered, that the stranger knew well that she was a VVoman Covert, *in cam. Scacc.* 7 *E*. 4. 14. *Sub pœna* 3. *B. consc.* 13. *b. Feofm. al use* 4.

Receive money.

cui in vita Coverture.

Prison, Satisfact.

Feoffee, Notice.

7 *E*.4. *Plead Actions, costs.* 25 Note that a Feoffee of trust is bound by conscience to plead all Pleas, and to maintain such actions for the land as the Feoffor will have him, but it shall be at the Feoffees charge, *per omnes Justic.* but it is doubtfull whether the Feoffees be compellable to plead dilatory Pleas, 7 *E*.4. 29. *sub pœna* 9. *br. Feofments al uses* 38. & 6. *consc.* 27.

Dilatories.

8 *E*. 4. *Hen.* 26 Note that *Coke* Justice said, that he sued once a *sub pœna* against the heirs of a Feoffee upon trust, and the matter was long debated, and

and the opinion of the Chancellor, and of the Justices was, that the *sub pœna* did not lie against the Heir, whereby he was put to exhibit his Bill in the Parlament, 8 *E.4. 6. sub pœna*, 8.*B.consc.16*. Note that it must be intended that the Heir had not the land, but that the land was sold before by the Feoffee to a stranger; for if the Heir had the Land, he is liable to the trust as well as the Feoffee. *Parlament*

27 If I do lend money to *I. S.* and he infeoffeth me of his Lands, and it is agreed that I shall take the profits thereof untill he have payed me: if *I. S.* do pay the money, or tender it unto me, and I refuse to re-infeoff him, he may compell me by the *sub pœna, per Pigot Serjeant. 9 E.4. 25. Bar.100.* *9 E.4. Payment, Tender, Refuse to re-infeoff.*

28 It was holden in the Chancery, that if any Feoffee upon trust do infeoff any other which knoweth of the trust, I may have a *sub pœna* against them both; but if a stranger knowing the trust had done a Trespasse upon any Feoffee, I might compell my Feoffee by *sub poena* to sue him, and to recover Damages, I shall have no *sub poena* against the Trespassor, but onely against my Feoffer, because he might lawfully procure his own discharge, but the Reporter thinketh that the Trespassor is punishable by *sub poena*, as well as the Feoffee, 11 *E.4.8. sub poena 13. consc.17.* *11 E.4. 8; 13. consc.17*

28 A *sub poena* was sued against two sons and heirs of gavel land to compell them to make an Estate of the land of which the Complaintiff had infeoffed their father and others to his use, of whom their father was the Survivor, the Defendant said, that the common voice of the Country is, that the Feoffment *14 E.4. Heirs, gavel kinde, common voice.*

ment was to the use of the Complaintiff, and of his VVife, and of the Heirs of their two Bodies begotten, who have Issue, therefore they prayed a VVrit to warn the Issue, and upon the VVrit the issued appeared, and shewed that he was under age, and prayed that the matter might stay untill he came to age, and the Chancellour by the advice of *Laicon* and *Litt'eton* Iustices awarded that the matter should not stay, because he was not seized of the Land by a Discent, wherefore the Issue by his next Cousin declared his Title, 14 *E.*4. Age 20.

Age, Discent,

Next Cousin,

30 Note that a *sub poena* doth lie against the Heir of the surviving Feoffees, 14 *E.*4. *Sub.*14.

14 *E.* 4. *Heir,*

31 A *sub poeua* was brought against three Feoffees upon trust, to compell them to execute an Estate to the Complaintiff, one of them said, that the Complaintiff made a Feofment to the other two in his absence to the behoof of all three, and he did never agreed to the Feofment, and the Land is holden of him, so that he cannot execute an Estate but that he shall extinguish his own Seigniority; and therefore he disclaimed in the Land, and it was allowed to be a good answer, *per curiam Cancellarii*, 16 *E.* 4 4. *sub poena* 18.

Agree. Lord.

Extinguishment. Disclaimes.

17 *E.*4. *Award, Release.*

32 If I and another do submit our selves to an award, and it is awarded that I shall cause my Feoffees in trust to release to the other being in possession, I may compell my Feoffees by *sub poena* to fulfill the award *per omner Instic. in communi banco*, 17 *E.*4.4.

33 A VVoman made a Feofment upon confidence, and afterwards took a Husband, and in her Death-bed she made Testament that her

Testament.

her Feoffees ſhould make an Eſtate to her Huſband, and to his Heirs; the VVoman died, and the Husband ſued a *ſub poena* to compell the Feoffees to perform her Teſtament, and it was ruled that the Teſtament was void, and that the Feoffees were not compellable to perform the ſame, for Law and Conſcience do allow nothing to be good which is done by VVoman Covert concerning her Inheritance, except it be by Fine leavied where ſhe is openly examined in the Court, for this Teſtament would be a Diſ inheritance to her Heir, but ſhe may make her Teſtamet of Goods, and make Executions by conſent of her Husband *per Cancell. & omnes Juſtic. uno tantum excepto.* And *Vavaſor* ſhewed to the Court that *Anno* 7 *E.* 4. a VVoman Covert having Feoffees upon truſt, ſhe and her Hushand ſold the Land, and ſhe received the money, and afterwards the Huſband died, and ſhe ſued a *ſub poena*, and it was adjudged to be a good ſute, 18 *E.*4.118. *conſc.* 28.*b. Teſtament.*13.

Coverture.
Fine.

J. 4. 85.

34 The cuſtome of *Kent* is, that an Infant of fifteen years may ſell his Land, and the caſe was that an Infant made Feoffees upon truſt, and afterwards being above fifteen years old he willed the Feoffees to make an Eſtate thereof to him and his VVife in tail, and the queſtion was whether they were compellable by *ſub poena* to do it or no, and it was holden that the Feoffees were not compellable, becauſe the Infant cannot will his Land by the cuſtome, for the cuſtome is onely of Sale, and is always to be conſtrued ſtrictly, according to the very words alſo at the Common Law, ſuch a VVill made by the Infant of Lands is void, and ſo it is in

20 *E.*4.
Cuſtome,
Infant,
Sale.

Cuſtome
Strict.

in conscience *per Littleton Jenney & omnes socios Justic.* 21 *E.*4.*b.Testament.*17.

21 *E.*4. *Burgh English, youngest son, Gavel-kinde.*

35 Note in Burgh English land where the youngest shall inherit, if the Father make a Feofment upon trust, the youngest son shall have the use, and the *sub poena*, and so it is of Gavel-kinde land, where all the Brothers do inherit *per Dig. App.* 21 *E.* 4. 24.*b. Testament.*17.

22 *E.*4.

36 *Hussey* chief Justice of *England* said, that when he came first to the Court which was about thirty years past, it was holden by all the Court that if one infeofted another of trust which died seized so that his Heir were in by Discent, no *sub poena* should lie against the Heir, for the same reason a *sub poena* might be against the Heir after two Discents which were inconvenient, but the Chancellor said that there are Presidents in the Chancery that a *sub poena* doth lie against the Heir *in Cam.Scacc.*22 *E.*4. 6.*b.consc.*23.

Heir, Discent,

d.v.87.

President.

7 *H.*7: *Notice, Feoffee.*

37 If a feoffee upon confidence make a feofment to one that hath knowledge of the confidence the feoffer shall be restored again in the Chancery, otherwise it is if the purchasor had no knowledge of the confidence *per Cancel.* 7 *H.*7.12. *sub poena* 18.

5 *H.*7. *Infant, Offices.*

38 The Feoffees upon trust of an Infant may grant all ordinary Offices for term of life, as Steward, Bailiff, and Receiver, and they shall have allowance thereof, in their Accounts when they are called to account in the Chancery, but they cannot grant any fees for term of life, without the assent of the Heir when he is of full age *per Hussey & Brian cap. Just. Ang.* But *Keble* Serjeant said, that if the Feoffor were

Account, Fees, Assent.

were able and willing to be Bailiff or Receiver himself, or if that there were need of any Steward, Bailiff, or Receiver, then he might repeal the Grants by *sub poena*, also it was agreed that the feoffees might defend the Land in all sutes with the profits thereof, and should have allowance thereof in Counsel, 8 *H.7. b. Ftofments al uses* 12.

Defence, Sutes. Allowance.

39 Note it was adjudged that a VVoman Covert Executrix might make sale of her lands to her Husband, and that it is a good Bargain, and the feoffees upon trust are bound to make a feofment accordingly; and in this case because three feoffees did the contrary, they were committed to the Fleet, 10 *H.7.20.* This is to be understood, where the Land was devised to the Woman being Executrix to the intent to be sold for the performance of the VVill of the Testator.

10 *H.7. Coverture, Executrix, Sale, Fleet.*

40 Certain feoffees were seized to the case of Sir *Richard Rooe* for life, and afterwards to the use of others, and the feoffees made a feofment in fee to Sir *Richard Rooe*, the question was whether Sir *Richard Rooe* had forfeited his Estate or no, and *Hussey* and *Brian* chief Justices agreed that it was no forfeiture by the common Law, for no mans Reversion is discontinued thereby, otherwise it is if Tenant for life of land had made a feofment to a stranger, for that were a forfeiture, and the Chancellour said, that in the first case it was no forfeiture in conscience, but he would reform so much as was amisse done and no more, and so it had oftentimes been ordered before the Chancellour, 10 *H.7.2.*

10 *H.7. use for life, Forfeiture, Discontinuance, Reformation.*

41 A feoffee upon trust was seized by a

10 *H.7.*

sub

Injunction, Infeoff.

sub poena by the Feoffor, and the feoffee was injoyned that he should make an Estate to the feoffor before a day certain *sub poena* 100. *lib. in Caus.* 10 *H.* 7. 4.

Refeoff Die seized.

42 The Heir of Co.qu. use shall have after the death of his father the issues and profits of the Lands, as if his father had died seized thereof, and he may compell the Feoffees upon trust by *sub pœna* to infeoff him, and shall have all advantages, as if his father had died seised *in Camera Scacc. per Wood* Serjeant, 13 *H.* 7. 7.

4 H.7. 1 Refeoff.

43 If the Feoffees upon trust will not infeoff the Feoffor, he may compell them by *sub pœna in communi banco per Brian cap. Justic. de communi banco & Danvers Justic.* 14 *H.* 7. 19.

15 H.7. Testament, sell.

44 One having feoffees in trust, devised by his Testament, that his Feoffees should sell the Land, the Feoffor died, the Feoffees infeoffed others to the first use, the second Feoffees may not perform the Will, but the first Feoffees may, and the second Feoffees may do it, because there is a kinde of use in *I.S.* seeing he is specially named, and he may compell them to sell unto him, and if the Will were that the Feoffees should sell his Lands to pay his Debts, the Creditors may compell the feoffees to sell it, but if he had willed that the feoffees should sell the Land for money to be distributed there no man can compell them to make the Sale *per Fineux cap. Justic. & Read & Tremaine Iust.*

Specialtie named, Debts, Creditors.

If the Will were that his Executors should sell it, though his Executors refuse to administer, yet the ordinary Administrator may not sell it, but the Executors themselves may, notwithstanding

standing the refusall cause the uses not testamentory *per Finenx cap. Iustic. Angl. Read & Termail Iustic.* And if he will that his Land shall be sold, and shew not by whom, his Executors shall sell it, and not the feoffees, for the Executors have the greatest confidence put in them, for they have the disposition of the money for which it is sold *per Fineux cap. Iust. Angl. Read & Tremaine & Frowick Serjeant.* And if the Will be that the Land shall be sold, the Heir shall take the profits untill it be sold *per eosdem in Banco Regis*, 15 *H.*7. 12. *b. Feofm. al use* 12.

Distributed, Executors refuse Administration, Ordinary Administrator, Testamentory Executors, Executors, Heirs.

45 If one having feoffees upon trust do make his Testament that they shall have an Estate to *I. S.* and dieth, if the feoffees infeoff others to the first use, the second feoffees may make the Estate by *Kingsmell* Serjeant, 14 *H.* 7. 33. 23. *Feofments al use* 12.

14 H.7. Testament, Specialty, named second Feoffees.

46 In a Formedon against two feoffees upon trust, if the feoffees refuse such Pleas as the feoffor doth minister to them, or if they or one of them do refuse to vouch where the feoffor sheweth to them good cause of voucher, the feoffor hath no remedy against the feoffees to compell them but by *sub pœna*, or else by Action upon the case *per totam Curiam.* And *Bradnell* chief Justice of the Common-place said, that if a feoffee upon trust die without Heir, or die his Heir being within age, or is attainted of felony, so that the Land cometh to the Lord, the Lord shall have it to his own use, and the feoffor hath no remedy *in communi Banco*, 14 *H.* 8. 24.

14 H.8. Pleas refuse, Voucher, Action de case without Heir, within age, attainted, Eschete, Lord.

47 The feoffees upon trust may grant the Offices of Steward and Receiver *per Newdibank* Serjeant; if the feoffor die without Issue within

14 H.8. Office, without Heir.

within age, the Lord shall hold the land to his own use, and if the feoffees acknowledge a Stat. Merchant, and the Conusee do extend the Land, he shall hold it to his own use, because the said persons do come unto the Land by the operation of Law, and not by their own Act, nor by the Act of the Feoffees, but if the feoffees inteof a stranger which hath notice of the first use, there the second feoffee shall be seised to the first use, though he paid a consideration, *Quia participes criminis consentientes & agentes paci plena plectentur dolus & fraus nemini patrocinetur*; and if the second feofment be to one that hath notice, and he pay consideration, then he shall be seised to the first use, but if he pay no consideration, nor have no notice, yet it shall be to the first use *per Justic. & Servients*. If the feoffees grant a Rent for Life out of the Land without any consideration. If it be to one that hath notice of the first use this Rent shall be to the use of the feoffor of the Land, *per Pollard, Brook, & Fitzherbert Iust. in communi Bancó*, 14 *H*.8.4.

within age,

Lord, Dower,

Stat. Merchant, Notice, Particeps criminis consentientur fraus.

48 A use shall ensue the nature of the Land, for if it be use of the Burgh English Land, the youngest shall have it; and if of Gavel-kinde, then all the Children, *por Pilman* Serjeant, 14 *H*.8.6. *in banco & 27 H*.8. *per Pollard apprentic.*

27 H.8. Burgh English, Gavel-kinde.

49 If the feoffee upon trust die, his Heir shall be subject to the trust, *per Bradwell cap. Just. Fitzherbert, & Brook Justic. in communi banco*, 14 *H*.8.7.

50 Note by *Brook* Justice, that uses are created by the common Law, and are relieved by conscience, and all medling with the Land by the

14 H.8. Common Law.

the Feoffees ought to be at the desire of the Feoffor, and if the Feoffee do otherwise, he is chargeable in conscience, 14 H.8.8. *in communi Banco.* — *Creation, Reuel, Desire of Feoffor.*

51 If one have Feoffees in trust of Seigniory, if the Tenancy do escheat unto them they shall be seised to the use of the Feoffor, and so it is of Land recovered in value, *per Pollard Iust in communi Banco*, 14 H.8 9. — 14 H.8. *Seignory, Escheats, Recovery in value.*

52 One having feoffees upon trust wills that his Executors should sell his Land, and died, if that Executor make another Executor, in that case the Executor of the Executor cannot sell the Land, because the first Executor had that power as in authority severall from his Executorship, and though the first Executor had refused the Aministration, yet he might have sold the Land *per curiam in cancellaria Scacc.* And if he had willed that the chief Justice should sell his Land, although that the chief Justice had resigned his Office and another been placed, yet the first should sell his Land *per Bradwell Justic. communis Banci*, and if the will were that *John S.* should sell his Land, if *I.S.* die his Heir cannot sell it, because the trust is determined *per Shelley & Ingelfield Justic. & willoughby & Spilman* Serjeants, 19 *Hen.* 8. 9. — 19 H.8. *Executor, Executor of Executor. Refuse, Administ. Ch. Iustice, Resignation, Heir.*

53 Note by a Statute *in Ann.* 1 *R.*3. the Will of the Feoffor is made good by the common Law release before it took effect but by conscience, 1 *R.*3. — 1 *R.*3.

54 One make a Feofment to the use of his last Will and Testament, and declareth by his Testament that the Land shall be to the use of his VVife for Life, and afterwards to the use of his — 19 H.8. 30 H.8. *Testament, Revoke use.*

Expressed upon Livery.

his Son in tail, in this case he may change his VVill and the uses at his pleasure, because it is referred to his Testament *per Bradwell capit. Iust. communis banci & Fetchlers & Inglefield Iust. in communi Banco*, 19 H.8.11. & 30 H. 8 6. *Feofment* 47.

30 H.8. *Covenant*, *Notice*, *Springing use*, *Sale.*

55 If I do covenant with *I.S.* that when he shall infeof one of three Acres, I and my Heirs and Assignes will stand seised of other Lands to his use. If I. make a Feofment unto me that hath no notice of this use, yet if *I.S.* do infeof me of their Acres, the Feoffee shall be seised to the use of *I.S.* because it is a Springing use, and the land is charged with that use in whose hands soever it come, but if *I.* have feoffed, and they sell the said land to me that hath no notice of the use, there the second Feoffees shall be seised to their own use, 30 *H.8.6. Feofments al use* 50.

Temps H.8 Fundamentum legum imperpetuum.

56 If I do buy lands and the Seller executeth an Estate unto me, *habendum imperpetuum*, without saying to my Heir, the meaning of the Bargain being that I shall have the Fee-simple if the Seller do refuse to make further assurance, I may compell by *sub pœna per Audley Cancell. temp. H.8. & liber qui dicitur fundamentum legum Angliæ B. consc.25.*

34 *H.6. Pet. in Canc. Sale, Profits, Executor.*

57 The Feoffee upon trust sold away part of the Lands, and received money for it, and the rest he kept, and took the profits, and dyed; the Feoffor *per Bill in Cancell.* recovered against the Feoffees Executor the money received, the value of the profits, *per decretum in Cancell. ex assensu omnium Iustic. & aliorum de Concilio Regis præsentium pet. in Cancell. de Anno* 34 *H.6.*

CHAP.

CHAP. III.

Of Copy-holds.

TEnant at will by Copy of Court Roll shall have a *sub pœna* against his Lord, if he put him out of his Tenement, *per Kirkby Magistrum Rotulorum, & Pool* Serjeant, *in Canc.* 32 *H*.6.21. *Stat. sub pœna* 2.

32 H.6. Put out Lord.

Note, *Littleton* Serjeant said, that he saw once that Tenant by Copy Court Roll sued a *sub pœna* against his Lord, and it was holden by the Justices that he should recover nothing; but *Danby* chief Justice of the common Pleas said, that the Judgement was so given because he sued to have recovered the Free-hold whereunto he being a Copy-holder could have no right, 7 *E*.4.19. *sub poena* 6. *Tenant per Copie* 10.

CHAP. IV.

Of Chattels Real.

ONe being bound in a Statute Merchant paid the money without having a Release, and notwithstanding the Conusee sued Execution, the Question was whether the Chancellor might grant a *sub poena* against the Conusee *Fairfax Iust.* and *Hussey* chief Justice of *England* said, that he might not, for it were no reason

22 E.4. Statute Merchant, Payment, Release,

Witnesses, Record. reason that the Testimony of two VVitnesses should defeat a matter of Record, *Camera Scacc.* 22 *E.*4.6.

7 H.7. Statute Merchant. Recovery, Termor, Falsifie, Covin. *Richard Reade* had Execution of certain Lands upon a statute Merchant, and the Debtor sold the Land to Sir *William Capell* who recovered the same by Default with Voucher against the Debtor, whereupon *William Capell* entered, and the Termor sued a *sub poena*, and it was holden that if *Reade* had no remedy to falsifie this recovery, then he should be restored in the Chancery by *sub poena*, because it was done by Covin *per Cancell. & Hussey & Brian cap. Iust.* 7 *H.*7.11.& 12.*b.consc.*8.& *b. Faux Recovery* 25:

7 H.7. Recovery, Receipts, Termor, In Prison, Beyond Sea. If a Recovery be had against the Lessor, and the Lessor for years do not pray to be received, if by that means he have no remedy at the common Law, he shall have remedy in the Chancery, so that he were in Prison or beyond Sea, or had any reasonable cause of his Default, *per Conisby & Keble* Serjeants, but *quære* if he had no such cause, 7 *H.*7.10.

3 M. use, Lease, Stat. 3 H.7. Fraud, Creditors. If one make a Lease for years, or grant his Lease for years to a use, this grant and use is good notwithstanding the statute of *Ann.* 3 *H.* 7.*cap.*15. *uses* 7. because the statute maketh onely these Gifts of Chattels void, which were made to defraud Creditors, 3 *M.*16. *Feofments al use* 60.

CHAP.

CHAP. V.

Of Chattels Personals.

IT was agreed upon between *I.S.* and *I.D.* that *I.D.* should have certain Debts due unto I. S. by divers persons, and *I.D.* did enter into Obligation to I.S. for the Government of certain summs in consideration of the same Debts; and because there were but things in Action, and that I. had no remedy to recover the Debts by the common Law, therefore I.D. sued a *sub pœna* against I S. to be discharged of the Obligation by conscience, and for so much as it appeared that by his Contract no Duty could rest in I.D. therefore it was decreed that I.D. should bring in the Obligation by conscience, for so much it appeared, that by his Contract no Duty could rest in I.D. therefore it was decreed that I.S. should bring in the Obligation to be cancelled, or else release to I.D. *per Canc. cum opinione omnium Justiciar.* 37 *H.6.* 13.*b. Barr.* 75.*6.consc.*4.

37 H.6. Debts, Obligation

Things in Action.

No remedy

2 Sir *Thomas Brown* being possessed of certain Goods was attainted of Treason, which Goods came to the hands of *Iohn Brown*, the King by Patent gave the Goods unto *Walwine*, and *Walwine* sued a *sub pœna* against *Iohn Brown* for the Goods, who came into the Chancery by *Jenney* his Counsel, and demanded Judgement of the *sub pœna*, for that a *sub poena* doth not lie but where the party hath no remedy by the common Law, and in this case the Complaintiff may have an Action of Detinue

39 H.6: Treason,

Attainder, King, No remedy Detinue.

nue, for the King might have had the like Action, to whom it was answered by *Greefield*, being the Complaintiffs Counsel, that the King himself can have no Action by the common Law for Goods forfeited, untill the Goods have been seised to his use, or else that the Goods be proved to be his by matter of Record, and yet the King hath Election to sue for them in what Court he will, and so may his Patentee; also the Grantee can have no Action for the Goods at the common Law without having had possession, seeing they were granted to him as things in Action, and the Court held that the *sub poena* did lie very well, and *John Brown* was commanded to bring in an Inventory of the Goods against the next day, or else to be committed to the *Fleet*, *in Cancell.* 39 *H.* 6. 26.*b. conse.*6.

Forfeiture, Seisure, Record, Court, Possession, Things in Action, Inventory, Fleet.

A Clerk made I.S. his Procurator of his Benefice, and promised him by Oath that he would save him harmlesse for the Occupation, the Clerk resigned unknown to be the Procurator, and he was sued for the Occupation, and therefore sued a *sub poena*. *Jenney* Apprentice said, that he ought to sue in the Court Christian for the breach of his faith; as if one be affianced to a Woman, and then forsake her, he is to be sued there and not here, the Chancellor said, that it was true that he ought to sue there for breach of Oath, *Si petit ipsum canonice inimicitia*; but he shall have remedy here for the Damages he sustained by the not performance of the promise, *Jenney* said also, that it was his folly to trust his word, and therefore he had no remedy, *Quia Deus est Procurator fatuorum*, 8 *E.* 4.*b.consc.*14. *sub poena* 7.

8 E.4.3. *Procurator, Save harmless, Notice Oath, Court Christian, Affiance, Damage, Promise, Folly.*

A *sub poena* was sued against three Executors, and one of them appeared, and the Complaintiff prayed that he might be compelled to answer; *Fairfax* said that he ought not to answer untill his fellows appeared also; for in the Action of the common Law one Executor shall not be forced to answer without his Companions, by the statute of 9 *E.3.cap.3.* Also it may be that the others can shew matter to abate the Bill of which this Executor hath no knowledge, the Chancellor said that the three Executors are instead but of one person, *viz.* the Testator, and therefore one of them being but a Member shall not be forced to answer untill they have all appeared. Also if he should answer, it might be that through his ignorance the other should be concluded, which were not conscience; also that statutes that ordain Proces do not extend to this Court, but if it give a little right this Court must obey it, 8 *E.* 4.5. because 15. *Responder.6.*

8 E.4. Executors, Answer, One Executor, Abate Bill, Notice, Ignorance,

A *sub pœna* was sued, because the Defendant had recovered upon an Obligation by sute one Court, whereas in truth the Obligation was made in another Court, by means whereof the Complaintiff could not be suffered to plead divers Pleas, which he might have pleaded if the sute had been pleaded in the right Court, and the Counsellor said that the *sub pœna* did well lie, because the Defendant did against conscience, for he would not have the truth known, and therefore be sued in a forreign County, and the truth cannot be so well known and tried in any place as it may be in the County where it was done, 9 *E.*4.2. *sub pœna* 10.*b.conse.*

9 E.4. Obligation, Forreign County, Action, Pleas.

6 *Worsley* and *Middleton* bought certain

9 E.4.

Obligation, Wools price three pounds of Sir *Henry Wich*, and were bound by severall Obligations, whereof one was of three hundred pounds, and *Middleton* had all the profit of the Woolls; Sir *Henry* died and made his Executrix, against whom *Worlsey* sued a *sub pœna*, shewing in his Bill that whereas she had received a part of the money of *Middleton*, and had given him longer day, yet notwithstanding she had put in sute against *Woolsey*; *Catesby* for the Defendant said, that though she had respited the sute against *Middleton*, yet *Worsley* is not to have advantage by it, for by Law and Conscience she might have sued which of them she would; and if she had granted to *Middleton* that she would never sue him, yet that is no Discharge to *Worsley*; the Chancellor said, that at first she might have chosen to sue the one or the other, but seeing that she had made a covenant in the law of nature between her and *Middleton* to respit the sute against him, that shall give advantage to *Worsley*, for she hath chosen to be paid by *Middleton*, and if he had either paid her, or else that it were agreed between them that she should take it up of a stranger which is indebted to *Middleton*, *Worsley* should have advantage of that, 9 *E.*4.41. *sub pœna* 12.*b.consc.*

Receive part, Longer day,

Discharge, Election,

Respite, Sute,

Payment by one.

16 E.4: Defraud Gift, Sanctuary, Husband and Wife, 7 A Debtor made a Gift of all his Goods to another to the intent to defraud his Creditors, and keep still the Goods in his own possession, and took Sanctuary at *Westminster*, and died, the Goods coming to the hands of his Wife, who took another Husband, against whom (being possessed of the Goods) the Creditors sued a *sub pœna*, and the Husband was compelled to answer to it, *per curiam cancell:* 16 *E.*4.

E.4 9 consc.19. it seemeth the Gift was void in Law.

One was Surety for another, and the Debtor with two others were bound by Obligation to the Surety to save him harmlesse, afterwards the Surety paid the money and sued his Obligation against the principall and the two others, which sute depending the principall sued a *sub pœna* against the Surety to have certain Goods out of his hands which he had delivered unto the Surety for his security, before the making of the Obligation, and so prayed that he might not be double charged, wherefore he prayed redelivery of his Goods, the Defendant answered that his Goods were delivered for another cause, and shewed the cause, and thereupon they were at issue; and the Complaintiff prayed an Injunction that the Defendant should not proceed in sute upon the Obligation, but the Court denied it, because the Defendant had intituled himself by severall means, as well to the Goods, as to the Obligation, and therefore it were against reason to delay his sute, *qd nota*, 16 *E.4.9.b.consc.20.*

16 E.4. Surety, Goods, Double charged, Injunction.

One was Surety in a statute Merchant, payed the money without having a Release, and notwithstanding that the Conusee sued Execution, the Question was whether the Chancellor might grant a *sub pœna* against the Conusee; *Fairfax* Justice and *Hussey* chief Justice of *England* said that he might not, for it were not reason by the Testimony of two Witnesses to defeat a matter of Record, and so it is of an Obligation, for the Debtor may refuse to pay the Debt without any Acquittance, it is his folly to pay the Debt twice then to avoid Accord or

22 E.4. Statute Merchant. Witnesses, Record, Obligation, Acquittance.

or Specialty by two Witnesses, and the Chancellor said that it was the common course of the Chancery to grant *sub pœna* upon an Obligation so satisfied, and that thereof there are divers Presidents in the Chancery, but he agreed that no *sub pœna* doth lie upon statute, because it is matter of Record, *in Cam. Scacc.* 22 *E.*4.6.*b.consc.*23.

Common course,

Presidents.

10 A Bill exhibited conteining that whereas the Defendant had recovered Debt and Damage against the Plaintiff, and was paid without any Release or Acquittance, yet the Defendant had sued Execution notwithstanding, and because the Complaintiff had no remedy by the common Law, he prayed a *sub pœna*, but the Chancellor would not grant it without advice of the Justices; for by that means every Record might come to be examined before him, and so the common place should be destroyed, 22 *E.*4. *sub pœna* 16.

22 *E.*4. *Recovery, Payment, Release, Acquittance,*

Record.

11 One Executor released unto a Debtor without the consent of his Companion, by means whereof the Will could not be performed, and the other Executor sued a *sub pœna* against the Executor which released, and against the Debtor, *Fineux* Serjeant said, that it was not remediable, for every Executor hath an absolute power by himself, the Chancellor said, *Nullus recedat à cancellar. sine remedio*, and it is against reason that one Executor should have all and release alone, *Fineux*, *Si nullus recedat sine remedio nullus indiget esse confessus*, but the common Law is ordained for many matters, and some such as are remediable by the common Law, are to be relieved in the Chancery, and divers are remediable by neither,

4 *H.*7. *One Executor,*

Release, Testament,

Sine remedio, Common Law,

Chancery.

ther, and such are in conscience between a man and his Confessor, of which sort this is one; the Chancellor said that every Law is or ought to be according to Gods Laws, and Gods Law is that one Executor being of evil disposition should not spend all the Goods, and if such an Executor being able do not make restitution, or being unable be not willing to make restitution, he shall be damned in Hell, and the Testament is, *Constituo tales esse executores meos ut ipsi disponant.* So that their power in conscience is joint and not severall; and also it is *pro salute animæ meæ*, wherefore they must not mispend, if they do, they do contrary, then it is without Warrant, and to be remedied in conscience, and the Chancellor that he would have the matter argued, 4 *H.*7.4. *sub pœna* 17.*b. consc.*

Conscience.
Gods Law
Restitution,
willing,
Damned,
Joint power,
Pro salute animæ,
Mispend,
Argue.
7 H.7.

If the Debtor payeth Debt wherein he was bound by Obligation, and receive Acquittance, this is no Bar at the common Law, and yet to be relieved in conscience, *per canc.* 7 *H.*7.11. If one be indebted to me without Writing, and he dye, I have no remedy against the Executors by the common Law, but in the Chancery by Conscience, *per canc.* 7 *H.*7.12.

Obligation
Acquittance,
Bar, 7 *H.*7
Simple contract,
Debt Executors.

Thomas Baby exhibited a Bill, that whereas he delivered certain Goods of trust to the Defendant, and thereon borrowed twenty sh. to be paid at a day certain, at which day he paid the same, and the Defendant then promised to deliver the Goods on the next morrow; yet the Defendant before the morning sold the Goods to a stranger, to the end that if the Complaintiff should sue an Action of Detinue he must wage his Law; and it was decreed *in curiam cancell.* that

20 *H.6.*
Petic. in Canc.
Goods,
Trust,
Promise,
Sale,
Detinue,
Wager of Law,
Damages,

Doct. & Stud. *Obligation, Payment, Acquittance.* *Stat.* 27 *E.*3. *Stat.* 31 *H.*6. *Robbery, Spoil, Sea-ports, Subject.*

that the Complaintiff shoul recover his Goods and fourteen sh. for six Spoons parcell thereof, *Pet. in Canc.* 20 *H.*6.

If one be bound in a single Obligation, pay the Money and take no Acquittance, or if he take one and happen to lose it, he shall be compelled by the Law to pay it again, but yet he may be holpen by *sub poena*, *Lib. Doct. & Stud. cap.*12.

Note that the statute of 27 *E.*3. *cap.*13. and *Anno* 31 *H.*6. *cap.*4. do give authority to the Chancellor to hear and determine Robberies and Spoilings upon the Sea, or in the Ports; as well in the Cases of Subjects as Strangers. *v. hic fo.*58. *casu pro &* 3.

CHAP. VI.

Of Chattels in trust.

*2 E.*4. *Obligation, Sue.*

IF *I.* be bound unto *I.S.* to the use of *I.D.* there *I.D.* may sue a *sub poena* against *I.S.* and compell him to sue an Action of Debt against me upon the Obligation, *per Moil & Danvers Justiciarii in communi Banco*, 26. *consc.*6.

*4 E.*4. *Money, Obligation, Administrators.*

2 *I.S.* delivered two hundred Marks to the Chamberlain of *London* to be kept, and appointed the same to be delivered to his Executors or Administrators after his Decease to be imployed for his Soul, the Chamberlain delivered the Money to *I.D.* to keep, and *I.D.* entred into Bond unto the Chamberlain to the use of

of *I.S.* that he would re-deliver it to the Chamberlain when he should be required; *I.D.* died, and the Administrators sued a *sub poena* against the Chamberlain to compell him to sue *I.D.* upon the Obligation, because *I.D.* had refused to deliver the money for the Chamberlain, 4 *E.* 4.34. *b. consc.*10. *& b. prohibicon.*11.*b. Oblig.*40.

3 Note that if I give Goods to another to my use, and they be taken from him, he is bound in conscience to sue an Action of Trespasse against him at my charge, and to my use, but not to sue an Appeal of Robbery, because the Appellant must swear that his Appeal is true; and I cannot compell him to take that Oath, *per Chock Just. & Littleton Serj.* and *Brook* thinketh the reason to be because the Defendant in the Appeal may challenge the Combate, and bring the others life in adventure, 7 *E.*4.29.*sub poena* 6. *b. Feofments al use* 38. *& b. consc.*27.

7 E.4. Goods, Trespasse, Appeal of Robbery, Oath, Combate.

4 One was bound in a statute staple unto *I.S.* and *I.D.* to the use of *I.S.* and afterwards *I.D.* released to the Debtor, whereupon *I.S.* sued a *sub pœna* against *I.D.* and the Debtor, and rehearsed his Bill that the Debtor had knowledge that the Obligation was to the Complaintiffs onely use, that the Release was made by Covin between them to defraud him of his Debt, and it was ordered in the Chancery that the *sub pœna* should stand good against *I.D.* because of his Deceit, but the Debtor was discharged of the sute, because it is lawfull for every man to help himself, and to procure the Discharge of his Debt, especially seeing that *I.D.* might have molested him for the same; also it might

7 E.4. Stat. Staple, One releaseth, Notice, Covin.

might be that the Debtor had paid *I.D.* and it were no reason that he should pay it again to *I.S.* and it was alleadged for the Complaintiff that if I deliver Goods to another to keep to my use, if he sell them to one that knoweth the use of the Goods to belong unto me, I may have a *sub pœna* against the Seller and Buyer both, and so in this case, whereunto the Court answered that it was so in that case, because the Buyer did purchase Goods which in conscience are mine, but in this case by the Release the Debtor purchaseth nothing but onely discharageth himself, but the Reporter thought that the difference made between a Purchase and a Discharge was not good; for the Debtor is not cleared in conscience and before God unlesse he to whom the Debt in conscience appertaineth do discharge him, or if he exclude him of his Debt by policy it is not good conscience, but if the Creditor had paid the money unto *I.D.* it would have discharged him against *I.S.* 11 *E.*4. *sub poena* 13.6.*b. consc.*17.

Fraud,
Deceit,
Discharge, Goods,
Notice, Sale,
Purchase,
Policy,
Payment to one.

5 If one be bound to another to any use, and the Obligee knowing the use do release to the Obligor, I may have a *sub poena* against the Obligee, *per cancellariam*, 7 *H.*7.12. *sub poena* 18.

CHAP.

CHAP. VII.

Of Aliens.

THe ſtatute of *Anno* 27 *E*.3. is, that if any Merchant privy or ſtranger be robbed of his Goods upon the Sea, and the Goods ſo robbed come into any parties hands within the Realm, and he will ſue to recover the ſaid Goods, he ſhall be received to prove the ſaid Goods to be his own by his work or by his Chart. or Caket, or by good and lawfull Merchants, privy or ſtrangers, and by ſuch proofs the ſame Goods ſhall be delivered to the Merchant without making other ſute at the common Law, *Stat. Anno* 27 *E*.3.*cap*.13. *Merchant* 12. Note that by this ſtatute the Chancellor alone without any of the Juſtices hath power to proceed to Judgement, 2 *R*.3.2.

Stat. 27 *E*.3. *Merchant. Robbery, Sea, Proof, 2 R*.3. *Chancellor alone.*

2 Alſo the ſtatute of 27 *E*.3. is, that if Debate ariſe betwixt the Maior and Conſtables of the Staple and ſuch Merchant ſtranger as ſhall be aſſigned to ſit with them upon diſcuſſing of any plea or quarrell touching Merchants Aliens, the Tenor of the ſame Plea ſhall be ſent before the Chancellor and other of the Kings Counſel to be determined there without delay, *Anno* 27 *E*.3.*cap*.24. *ſtaple* 17.

Stat. 27 *E*.3. *Staple, Debate, Stat.* 31 *H*.6.

3 If any Subject attempt or offend upon the Sea, or in any Port within the Realm againſt any perſon ſtranger being upon the Sea, or in any Port aforeſaid, by way of Amity, or League, or truce, or by force of the Kings ſafe conduct or ſafeguard in any matter, and eſpecially in attaching

Sea-port, Amity, League, Truce, Safe Conduct,

taching of any such strange person, robbing or spoiling him of his Ship or Goods, or against any other person of his Lay-people, the Chancellor as well for the deliverance of such person attached, as to make Restitution of Ship or Goods or the value thereof, shall have authority calling to him any of the Justices upon a Bill of Complaint to him made to make such processe of the Chancery, as well against such Offenders to bring them into the Chancery to answer, as against any other persons to whose hands any such person so attached, Ship or Goods shall come, & for the Deliverance & Restitution by them to be made as shall seem to the Chancellor most necessary, and upon this Processe the Chancellor further to proceed in this matter if the case do so require by advice of any such Justice to make the person stranger so grieved to have full Deliverance and Restitution of his Goods, *&c.* and also of all the Costs, Expences and Losses made and suffered by him in this behalf, and thereupon to make all manner of execution upon the same out of the same in such sort as shall seem to him necessary for such Deliverance and Restitution to be had, calling him to any such Justice as aforesaid, statute 31 *H 6.cap.4. Aliens.* First, note that by this statute the Alien that complaineth must sue in the Chancery before the Chancellor assisted with one of the Justices. 2 *R.3.*

Attachment, Robbery,

Delivery, Restitution,

Justice; Possessione;

Costs, Expences, Execution,

2 *R.3. Assistant.*

13 *E.4.*

4 A Merchant Alien bargained with one to carry certain Bales of Merchandizes to *Hampton*, the party took the Bales and carried them to another place, and brake them up, and took out the Merchandizes, and converted it to his own use, and the Alien complained to the Counsel

Counsel in the Star-chamber; the Chancellor that although this Fact be Felony, yet it shall be tried before the Counsel, and not at the common Law, because the Complaintiff is a Merchant alien, and is come by safe Conduct, and it shall be determined according to the Law of Nature of the Chancery, and he may sue there from hour to hour, and from day to day for the speed of Merchants; also he said, that strangers shall not be bound by our statutes which are *introduct. jura legis* by statute that are *Deliberativa antiqui juris, viz. juris naturæ*. And although that by their being in the Realm the King hath Jurisdiction to compell them to abide right, yet that shall be *secundum legem naturæ*, which is called by some the Law Merchant, which is an Universal Law through all the World, *in camera stellata*, 1.3. 2 4.9. *Denison*. 2 .*b*. *Denisen* 5.

Star-chamber, Felony, Safe Conduct, Law of Nature, De horam hora, Statutes, Juris Naturæ, Law Merchant.

5 The Chancellor said, that whereas there is a statute that safe Conducts inrolled, and the number of Mariners, and the name of the Vessel; yet if any Alien have a safe Conduct, and have not those circumstances therein, the safe Conduct notwithstanding shall be allowed, and so hath been adjudged; for the Aliens do say, that they are not bound to know our statutes, and they do come into the Land by Warrant of the Kings Seal and safe Conduct, and if it shall not be sufficient, they are defrauded; but others saith the statute which ordaineth for the Forfeiture of Merchandize shall binde as well Aliens as others *in camera stellata*, 13 *E*.4, 10. *b*. *Denisen* 5.

Safe Conduct, Enrolment, E.4. *Statutes, Notice, Forfeiture.*

6 Note that it was said in the Star-chamber that a Denizen shall not sue an Alien before the

13 *E*.4.

Denisen, Sutes, Alien.

the Counsel, but an Alien may sue a Denizen, and it was said, that it is by force of the statutes, 13 *E.*4.10 *Denisen* 26. *Denison* 5.

13 E.4. Safe Conduct, Robbery, Waive, Pursue the Law, King is. In corpore, In bonis, Covenant.

If any Alien having a safe Conduct be robbed, and the Goods waved by the Felons, yet the Alien shall not be compelled to sue the Law against the Felon, neither may the King have the Goods as a Waive, nor any other by the Kings Grant, or by prescription, because the King hath granted unto him *salvum & securum conductum tam in corpore quam in bonis*, which is a Covenant between the King and him, and he may sue the King upon the same, *per omnes Justiciarios in Camera stellata*, 13 *E.*4 10.

19 E.4. League, common Law, Real Actions, Enemy, Safe Conduct, Open War.

Note that an Alien born under any Prince which is in League with the King may sue at the common Law all Actions of Debt and personal Actions, but not real Actions; but if he be born under the obedience of the Kings Enemy, then the Alien hath no Action or Sute unlesse he come by safe conduct; and note that if all *England* do make War with a forreign Prince which is in League with the King, yet if the King do not assent thereunto it is not open War, for the League must be broken by Ambassage, or otherwise by the King, 19 *E.*4. *b Denison* 16. & 20.

2 R.3. Star-chamber, Robbery, Sea, Possessions, 27 E.3.

A Merchant of *Spain* exhibited a Bill before the King and his Counsel in the Star chamber, against certain *English* men, and shewed that he was robbed upon the Sea by certain *Britains*, and that his Goods were brought into *England*, and are come to the hands of the Defendants, and prayed Restitution according to the statute *de Anno* 27 *E.*3 *cap.*13. and it was said by

all

all the Justices that the Complaintiff must prove that the King of *Spain* was in League with the King at that time, and the taking of the Goods also, he must prove that the first taker was under the Kings obedience, or else in amity with the King, and not the Kings Enemy, for if the taker were the Kings Enemy, and robbed the Complaintiff being the Kings Friend, yet those Goods being come to *English* mens hands shall not be restored, *Quia non est depredatio sed legalis captio prout inimicus capit super inimicum, in camera stellata*, 2 *R.* 3. 2. 6. *Denisen* 8.

League,

Kings obedience,

Enemy,

Restitution.

CHAP. VIII.

Certain Statutes giving special Power to the Lord Chancellour.

1. IN every original Writ of Action personal, Appeals and Indictments, in which the Exigent shall be awarded to the names of the Defendants addition shall be made to their Estate, Degree, or Mystery; and the Town, Hamlets, or places, and the Countries in which they were or be conversant, and the Clerks under whose names such Writs shall go forth written shall not leave out the Additions upon pain to be punished, and to make Fine to the King by discretion of the Chancellor, *stat. de Anno* 1 *H.* 5. *cap.* 5. *Additions.*

1 *H.* 5. *Additions,*

Clerk,

Fine.

2 If any person make Complaint duly in the Chancery, that any Murthers, Man-slaughters

Stat. 2 *H.* 5

ters, Assemblies of people in great number in manner of Insurrections, and Rebellions, Routs, is or be fled, and with-drawn in Woods, secret or unknown places, or elsewhere to the intent to avoid the execution of the Law, upon such Complaint a Bill shall be sufficiently made for the King, and the Chancellor after such Bill to him delivered (if he may be duly informed that such Bill containeth truth) shall have power according to his discretion to make a Writ of *Capias* at the Kings sute to the Sheriff where the Offences are supposed to be done, *ret. in Chanc.* then they shalbe put in Award or Mainprise after the discretion of the Chancellor, and moreover he shall send to inquire of such Offences, and upon that shall be done as the Law requireth: and if the parties stand out, then a Proclamation shall be awarded, *ret. in the Kings Bench*, and upon Default they shall stand convict and attainted, *stat. Anno* 2 *H.*5. *cap.*9. *Riots* 5. This statute is made perpetual, and it is enacted that the *Capias* shall not be awarded unlesse it be witnessed by two Witnesses of peace of the County where such Riots be supposed, that the common voice and fame is of the same Riots, *stat. Anno* 8 *H.*6.*cap.*14. *Riots.*

Murthers, Fly,

Stat. 8 H.6. Certificate, 33 H.6. This granted by Pet. in Canc. English Bill. 33 H.6. 1.part.

3 If any person be hurt or grieved in any thing, that the Justices of peace may hear, determine or execute in any wise, he is commanded to make Complaint to the Justices that dwell next to him, or to any of his fellows, and desire a remedy, and if he have then no remedy if it be nigh such times as the Justices of Assize come into that Shire, that he then shew his Complaint to the same Justices, and if he then have

Stat. 4 H.7. Justice of Peace.

have no remedy, or if the Complaint be made long before the coming of the Justices of Assize, and then he so grieved come unto the King or to his Chancellor, and shew his Grief, and the King shall send for the said Justices to know the cause why his Subjects be not eased, and his Laws executed, and if he finde any of them in Default of executing of his Laws in the Premises, he shall cause him so offending to be put out of the Commission, and to be punished according to his demerits, *stat. Anno 4 H.7.cap.12. Proclam.3.*

4 Poor people having cause of Action against any person, shall have by the discretion of the Chancellor Writs Original, and Writs of *sub pœna*, therefore paying nothing to the Queen for the Seals, nor to any person for the writing of them, and the Chancellour shall assigne Clerks to write the same, and also learned Counsel and Attournies for the same, without any reward to the King thereof, *stat. Anno 11 H.7.cap.12. Poor People.*

Stat. 11 H.7. Poor People.

5 If any Farmer of any lands belonging to the reparation of *Rochester* Bridg do not like to give for a new Lease as another will, then he shall have for his hettering or building such Recompence as shall be thought reasonable by Agreement between the Wardens and Assistants and him, and in Default of their Grievances, such as shall be thought meet by the Chancellor or Treasurer, *stat. Anno 18 Eliz.cap.17. Bridges 2.*

Stat. 18 Eliz. Rochester Bridge.

A statute was made concerning the exercise of Trades by strangers *Denisens in Anno 14 H.8.cap.2.* and there was a Decree and an Act made that search should be made by all stran-

St.21 H.8 St.14 H 8 Merchant, Strangers, Search.

gers being Artificers and Houſholders for Offences againſt that ſtatute, and if they refuſe, and the ſame proved before the Chancellor, or before the chief perſons of ſuch Cities or Town, the Refuſer ſhall uſe no longer his Occupation, *ſtat. Anno* 21 *H.*8.*cap.*6. *Aliens* 4.

Stat. 33 *H.*8. *Fa ſe token or letter.*

6 If any perſon falſly or deceitfully obtain into his hands or poſſeſſion any Money, Goods, Chattels, Jewels, or other things of any other perſon by colour or means of any falſe token or counterfeit Letter made in any other mans name, the Offender being convict by Witneſſe taken before the Lord Chancellor, or by Examination of Witneſſes, or by Confeſſion taken in the Star-chamber before the Counſel, or before the Juſtices of Aſſize in their Circuits, or before the Juſtices of P. in their General S ſſions, or by Action in any Court of Record ſhal have ſuch correction & puniſhmeut by Impriſonment of his Body, ſetting upon the Pillory or otherwiſe by corporal pain (except pains of Death) as ſhall be appointed by the perſon before whom he ſhall be convict, *ſtat.*33 *H.*8.*cap.*1.

37 *H.*8. *Tithes in London.*

If any variance ariſe in *London* about the payment of Tithes, and upon a Complaint made to the Maior, he not end the ſame within two moneths, or if any of the parties themſelves grieved, then the Chancellor upon a Complaint to him made within three moneths next following ſhall make an end of the ſame with ſuch Coſts to be awarded as ſhall be thought convenient, *ſtat. Anno* 37 *H.*8.*cap.*12. *Tithes* 9.

CHAP.

CHAP. IX.

Certain Statutes giving special Power absolute to the Lord Chancellour, jointly to others.

THe Chancellor and Treasurer taking to them Justices and other of the Kings Counsell, such as to them shall seem meet, shall have power to ordain remedy for the buying of Stockfish, and Botulph, and Salmon of *Barwick*, and fish *Bristrial*, and elsewhere, to the intent that the King and the people may the better be served, and have better markets than they have had before this time, and that the ordinances by them made in this party, be firmly holden. *Stat. de Callice.* 31 *E.* 3. *cap.* 5. *Fishers* 4. *Stat.* 31 *E.* 3. *Fish. wines*

2. No Master, Wardens, and Fellowships of Crafts or Mysteries, nor any rulers of Guilds or Fraternities, take upon them to make any ordinances, or to execute any acts by them heretofore made, in disheritance or diminution of the Prerogative of the King, nor of any other, nor against the common profits of the people, but if the same acts or ordinances be examined and approved by the Chancellor, Treasurer, or chiefe Justice, or three of them, or before both the Justices of Assize in their circuit in the Shire, where such acts and ordinances be made, upon paine of forfeiture of 40 l. for every time that they do the contrary. *Stat. de Anno* 19 *H.* 7. *cap.* 7. *Stat.* 19 *H.* 7. *Corporations. Ordinances.*

Stat. 14. *H.* 8. *Aliens.*

3. If the Wardens, and Masters of Fellowships of handicrafts, within any City or Borough, or Town Corporate, where such Wardens be, and in such where no Wardens of handicrafts are, then if the Bayliffs, or Governors of the Boroughs or Towns will wrongfully intreat any stranger, in executing of the *Stat. de Anno* 14. *H.* 8. then the stranger so grieved, may by bill or information complain to the Chancellor, or Treasurer of *England*, or to the Justices of Assize in the County for the time being, which by their examination shall have authority to hear and determine the same Complaint, and to award to the Complainant such amends, as by their discretions shall be thought reasonable. *Stat. Anno* 14. *H.* 8. *cap.* 2. *Aliens* 3.

Stat. 22 *H.* 8. *Scavage, or Chevage.*

4. The Tables to be set up in the City of *London*, touching Scavage within the same, shall be first viewed, examined, and approved by the Chancellor and Treasurer, the President of the Counsell and the Lord Privy seal, the Lord Steward and the two chief Justices, or by 4. of them at the least, and by them subscribed, *Stat. Anno* 22 *H.* 8. *cap.* 8. *Aliens.*

Stat. 25 *H.* 8. *Prises of Books.*

5. If any Printers, or Sellers of Printed Books, doe inhance their prises in sale of binding, at too high and unreasonable prises, in such wise as complaint be made thereof unto the King, or to the Chancellor or Treasurer, or either of the chief Justices, then they, or two of them shall have authority to enquire thereof as well as by oathes of 12 persons as otherwise by due examination by their discretions, and after the same so found, then they, or two of them from time to time, shall have authority

to

to redress such inhaunsing of prises by their tretions, and to limit prises as well of the books, as for binding them, and moreover, that the offendor being convicted, forfeit for every book by them sould and inhaunsed 3. s. 4 d. the one half to the King, the other to the party grieved, that will complaine. *Stat. Anno 25 H. 8. cap. 15. books.*

6. The Chancellor, Treasurer, President of the Counsell, Privy Seal, and the two chief Justices, or three of them, shall have authority by their discretion to set prices of all kind of Wines, that is to say, of the prices of the But, Tun, Pipe, Hogshead, Ponchen, Teirce, Barrel or Rundlet, when it shall be sold in gross, so that they or any of them cause the prices by them set to be written, and open Proclamation thereof to be made in Chancery, in Term time, or else in the City, Borough, or Town, where any such Wines shall be sold in gross, 28. *H. 8. cap.* 14. *Wines*, 20. *28 H. 8. Prices of Wines.*

7. The L. Chancellor, Keeper of the Great Seal, Treasurer, President, Privy Seale, and other of the Privy Counsell, the chief Justices, or three of them at the least, whereof the Lord Chancellor; Keeper, Treasurer, President or Privy Seal to be one, upon complaint made in writing, shall have Authority to take order with the bodies, lands, and goods of Banckerupts, for the payment of their debts. *Vide Stat. Anno 34 H. 8. cap. 4. Banckerupts.* *Stat. 34 H. 8.*

And thus much of the Absolute power of the Lord Chancellor his Judiciall power; the which poor barren Treatise I have not presumed to collect, either for instruction of hi *Banckerupts.*

Honor (from whose wisdome I have alwayes thought nothing can be hidden) or for ostentation of my reading and experience, (who do freely acknowledg my selfe the most ignorant man of my profession) but to this end, and with this intention have I done it, partly to provoke some good matter from those learned Lawyers, and skilful Antiquaries that are Attendants upon his Lordship, and especially for satisfaction to his desire that did demand it, and may command me.

Sic litabant Mola qui non habebant Thuca.

FINIS.

An ANALYSIS.

IN the Office of the Chancellor of *England* are six things to be considered.

I. HIS ANTIQUITY in Office and not in name, which hath been from the time of the first Creation of Kings, and Rulers, And he was called

AMONG the *Hebrewes*, *Mazere*.
AMONG the *Grecians*, *Nomophilax*.
AMONG the *Romans*, *Prætor*.

In OFFICE and name, which hath bin from the time of *Charls* the Great King of *France*.

IN OFFICE and name in *England*, which hath bin from about the time of King *Edward* the Confessor.

II. The ETYMOLOGY of his name.

Either *à Cancellando Iniqua Concessa Regis*, *viz.* by cancelling or disallowing the unjust Grants of the King, by withholding them from the Seale, untill the King may be better informed, according to the verse, (*Et mandata pii principis æqua fuit.*

Iniquas leges, *viz.* by cancelling the rigor of extreme laws, in tempring them with Conscience, according to the verse.

Hic est qui leges Regni cancellat iniquas.

RECORDS, *viz.* Of Cancelling such Records as ought to be made void, which may be either by drawing of crosse lines over such Records, aud by entring of a (*vacat*) in the Margent, declaring the cause of the Cancelling; Which may also be either by Judgment given in the Court, for admitting such Record, or else by personall agreement of such partie or parties, as it only concerneth. Or by plucking the Records from the File. And this ought not to be done but by authority of Act of Parliament.

Or *à Cancellis*, for that he sitteth in Judgement within certain limits or bounds. *&c.*

III. His constitution, which hath bin, and may be in two sorts, *viz.* By Letters Patents, which hath been but rarely used, and I find only three of them of Record.

Walter Grey, Bishop of *Chester*, and Chancellor, by Patent dated *Anno 7 Regis Johannis.*

Ralph Nevill, Bishop of *Chichester*, and Chancellor by severall Patents, one bearing date *Anno* 11 *H.* 3. the other *Anno* 17. *ejusd. Regis.*

One other in the time of *H. 6.*

BY DELIVERY of the Great Seal unto his hand and custody, which delivery is to be entred of Record, wherein is to be noted, that the Keeper of the Great Seal had the Seal delivered in diverse manners.

It was delivered to the Chancellor by the King, and immediately he took an Oath for the faithfull exercising of the Office of Chancellor, and then he sealed Writs therewith alone.

It

It was delivered to the Keeper of the Great Seale without any Oath, and therefore he did not commonly Seale therewith, but in presence of some of the Masters of the Chancery.

IIII. HIS Preheminences: *viz.*

Unto him are substituted all the Chancellors in *England*, *Ireland*, *Wales* and *Scotland*, and all they that have charge of any the Kings Seales wheresoever, beside the Lord Privy seal, By prescription.

The punishment of (*Scandala magnatum*) to be inflicted upon them that misreport of him by the Statutes of *H.* 1. *cap.* 33. and of *Anno* 2 *R.* 2. *ca.* 5.

He may weare in his apparel, Velvet, Satten, aud other Silks of any colour, except Purpurs, and any manner of Furs, except black Genets, of what estate or degree soever he be by the stat. of 24. of *H.* the 8.

He must follow the Court, and at all times be neer the King, by the Statute called *Articuli super Chartas*, *Anno* 28. *E.* 1. *cap.* 5.

He may have three Chaplaines qualified, whereof every one may purchase dispensation to have two Benefices, by the Statute *de* 21. *H.* 8. *cap.* 13.

To slay him it is Treason, declared by the Statute of 20 of *Edw.* the 3d. *cap.* 11.

If he be a Baron, or above, he shall sit in the Parlament, on the left side of the Chamber, on the higher part of the form on the same side, above all Dukes, except such as are Sonne, Uncle, Brother, Nephew, or Brothers or Sisters Sonne to the King, and also above all Officers, except the Vice-gerent. And if he be

be no Baron, he shall sit at the uppermost part of the Sacks in the midst of the Chamber, and in such degree he shall sit in the Star-chamber, and in all other Assemblies, and Conferences of Counsell, by the Statute *Anno* 31 *H.* 3. *cap.* 10.

He is a Conservor and Iustice of the peace throughout *England*, by prescription.

He is the only Visitor of all Hospitalls, and Free-Chappels, which be of the foundation of the King, or his Progenitors, by prescription.

He is Prolocutor in the higher house of Parlament, by prescription, *&c.*

V. Places of his Judiciall Session, *viz.*

CHANCERY, where he is the only Judge assisted by the Master of the Rols, and the Masters of the Chancery, and heareth and determineth causes of Law and Conscience, as Chancellor.

COUNSELL chamber, where he is associated with others of the Privy Counsell, and heareth and determineth causes of Estate, as a Privy Counsellor.

STARRE Chamber, where he is associated with the Lord Treasurer, President of the Counsell, and Privie Seale, and associated with one Bishop, one Temporall Lord of the counsell, and two Justices, and heareth and determineth, perjuries, causes penall, and of Common peace, by the Statutes of *Anno* 3 *H.* 7. *cap.* 1. and 21 *H.* 8., *cap.* 20. as a speciall Judge.

ESCHEQUER chamber, where he is associated with the Treasurer, and associated by the Justices, and other Sage persons, and examineth

mineth, and reverseth or affirmeth judgments given in that Court by the Statute of 31 *E.* 3. *cap.* 12. as a special Judge.

VI. HIS Authority and power, which is of two sorts, *viz.* As a Judge, and that is either ORDINARY as in these.

Scire fac: or execution upon a Statute Merchant, taking acknowledgement of Recognizances.

Scire fac. or execution upon a Recognizance knowledged in the Chancery.

Scire fac. to repeale Patents which are void or faulty.

Monstrance de droit, *Petition de droit.*

Traverse of Offices, and Inquisitions.

Pleas and Enterpleas, upon assignment of Dower.

Pleas and Enterpleas upon livery, and *ouster le maine.*

Pleas and Enterpleas upon partition.

Attachments upon contempts, in not executing of Writs and Proces by Officers, or upon signification of untrue or insufficient causes thereof, writs *de Corodio*, or *Pencor habendo*, unto Abbots, Priors and Bishops.

Audita querela, sued upon sutes in the Chancery.

Prohibition to stay proceedings in the Court Christian, or Admiralty, and consultation to be granted thereupon.

Originalls, or Bils by persons priviledged in the Chancery.

Originals, or Bils against persons privileged there.

Writs of Privilege, sued by persons privileged

ged, to remove sutes in other Courts into the Chancery.

AND DIVERS other of like sort.

ABSOLUTE, and by this power he ordereth and decreeth matters of Conscience, and the pleadings are in *English*; whereas in his ordinary power, he holdeth plea of matters according to the form of Common Law, and the pleadings are in *Latine*.

AS a MINISTER, GRANTING of pardons of Common Grace.

GRANTING and sealing of Commissions, OF patents and preservations, *&c.*

MAKING of Originall Writs of Processe, upon the Statute Staple, &c.

CONSTITUTING of certaine Officers belonging to his Office.

GIVING of Oathes to Officers, And such like.

FINIS.